

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1961

No. 141

STATE BOARD OF INSURANCE, ET AL.,
PETITIONERS,

vs.

TODD SHIPYARDS CORPORATION,

ON WRIT OF CERTIORARI TO THE COURT OF CIVIL APPEALS OF THE
STATE OF TEXAS, THIRD SUPREME JUDICIAL DISTRICT

PETITION FOR CERTIORARI FILED JUNE 10, 1961

CERTIORARI GRANTED OCTOBER 9, 1961

SUPREME COURT OF THE UNITED STATES

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STATE BOARD OF INSURANCE, ET AL.,
PETITIONERS,

vs.

TODD SHIPYARDS CORPORATION.

ON WRIT OF CERTIORARI TO THE COURT OF CIVIL APPEALS OF THE
STATE OF TEXAS, THIRD SUPREME JUDICIAL DISTRICT

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[fol. 1]

**IN THE
DISTRICT COURT OF TRAVIS COUNTY, TEXAS
53RD JUDICIAL DISTRICT**

No. 112,081

TODD SHIPYARDS CORPORATION,

v.

BOARD OF INSURANCE COMMISSIONERS, et al.

DEFENDANT'S FIRST ORIGINAL ANSWER
—Filed December 1, 1958—

To the Honorable Judge of Said Court:

Comes Now Penn J. Jackson, Robert W. Strain, and David B. Irons, members of the State Board of Insurance, William A. Harrison, Commissioner of Insurance, Will Wilson, Attorney General of the State of Texas, Robert S. Calvert, Comptroller of Public Accounts of the State of Texas, and Jesse James, Treasurer of the State of Texas, hereinafter styled defendants and in reply to Plaintiff's pleadings herein would show to the Court as follows:

Pleas in Abatement

I.

Defendants say that the plaintiff is not entitled to recover in any capacity from the "Board of Insurance Commissioners" or from any of said defendants as members of such "Board of Insurance Commissioners". Defendants do not know of the existence of any such entity as the "Board of Insurance Commissioners" and none of them are or ever have been members of the "Board of Insurance Commissioners". Defendants further state that the "Board of Insurance Commissioners" was abolished by the enact-

ment of Senate Bill 222, Acts 55th Legislature, R.S. 1957, p. 1454, ch. 499 and that such "Board of Insurance Commissioners" no longer exists. To this extent, therefore, this suit should be abated.

II.

Plaintiff is not entitled to recover against Penn J. Jackson, Robert W. Strain, or David B. Irons, or any of them in any of their respective individual capacities for the reason that there are no allegations set forth in the Plaintiff's Petition showing any breach of duty or act of omission on the part of any said defendants upon which plaintiff could predicate a cause of action. All of the actions objected to and complained of in the Plaintiff's Original Petition, if true, the defendants specifically deny, would be actions done upon the part of these defendants in their respective official capacities as members of the State [fol. 2] Board of Insurance. Accordingly, this plaintiff is not entitled to recover against any of the named individuals in their respective individual capacities and this suit should therefore be abated.

Wherefore, Premises Considered, Defendants pray their pleas in abatement be sustained.

Original Answer

Defendants deny all and several, each and every allegation in Plaintiff's Petition contained and demands strict proof thereof upon trial hereof and of this they place themselves upon the country.

Wherefore, Premises Considered, Defendants pray that plaintiff take nothing by its suit, and that defendants go hence with their costs and without day.

Respectfully submitted,

Will Wilson, Attorney General of Texas, Fred B. Werkenthin, Assistant Attorney General, Wallace P. Finrock, Assistant Attorney General.

In answer to the plaintiff's 8th amended petition, we adopt all of the allegations of the answer and also answer for the defendant G. B. Gibbs.

Bob Eric Shannon, Assistant Atty. General.

Duly sworn to by Wallace P. Finfrock, jurat omitted in printing.

[fol. 3] [File endorsement omitted]

[fol. 5]

IN THE DISTRICT COURT OF TRAVIS COUNTY, TEXAS
53RD JUDICIAL DISTRICT
No. 112,081

TODD SHIPYARDS CORPORATION,

vs.

STATE BOARD OF INSURANCE, Formerly Board of
INSURANCE COMMISSIONERS, et al.

PLAINTIFF'S EIGHTH AMENDED ORIGINAL PETITION
—Filed February 1, 1960

To Said Honorable Court:

Now Comes Todd Shipyards Corporation, a corporation duly created and existing under and by virtue of the laws of the State of New York and duly authorized by appropriate permit to solicit and transact business in the State of Texas, hereinafter called "Plaintiff", and, with leave of court first obtained, files this its Eighth Amended Original Petition. Todd Shipyards Corporation hereby complain of the State Board of Insurance and the Board of Insurance Commissioners, duly created and existing under and by virtue of the laws of the State of Texas, Penn J. Jackson, individually and as a member of the Board of Insur-

ance Commissioners and as a member of the State Board of Insurance, Robert W. Strain, individually and as a member of the Board of Insurance Commissioners and as a member of the State Board of Insurance, J. P. Gibbs, individually and as a member of the State Board of Insurance, William A. Harrison, Commissioner of Insurance, Will Wilson, Attorney General of the State of Texas, Robert S. Calvert, Comptroller of Public Accounts of the State of Texas, and Jesse James, Treasurer of the State of Texas, hereinafter called "Defendants", and for cause of action would respectfully show the Court as follows:

I.

That the 55th Legislature of the State of Texas enacted the following statute, appearing as Article 2138 of the Texas Insurance Code, which provides, among other things, as follows:

Taxed

[fol. 6] "Section 2 (e) If any person, firm, association or corporation shall purchase from an insurer not licensed in the State of Texas a policy of insurance covering risks within this State in a manner other than through an insurance agent licensed as such under the laws of the State of Texas, such person, firm, association or corporation shall pay to the Board a tax of five per cent (5%) of the amount of the gross premiums paid by such insured for such insurance. Such tax shall be paid not later than thirty (30) days from the date on which such premium is paid to the unlicensed insurer."

“(g) Any person, firm, association or corporation, or any receiver of such, failing to pay any tax for a period of thirty (30) days from the date when said tax is required by the foregoing Subdivision (d) or Subdivision (e), (whichever is applicable), shall forfeit and pay to the State of Texas a penalty of twenty-five per cent (25%) upon the amount of such tax and in which event the Board of Insurance Commissioners shall report the default to the Attorney General of Texas who shall prosecute a suit for and be entitled

to recovery of the amount of such tax and the amount of such additional penalty, which amount of such tax and penalty shall draw interest at the rate of six per cent (6%) per annum from the date such penalty accrues until fully paid."

II.

That under the duress of this unconstitutional statute, Todd Shipyards Corporation, during the period from September 22, 1958, through January 22, 1960, paid to the State Board of Insurance of the State of Texas, or its predecessor, the Board of Insurance Commissioners of the State of Texas, the taxes, penalties and interest attempted to be levied and assessed upon the New York contract, the New York transaction and the payment of premiums in New York City under this unlawful statute. The total of such taxes, penalties and interest so paid is \$20,605.53, and such \$20,605.53 was paid in the indicated amounts and on or about the dates following:

September 22, 1958	\$11,882.32
October 11, 1958	985.00
October 22, 1958	40.54
January 23, 1959	624.55
February 17, 1959	25.00
April 9, 1959	29.76
August 21, 1959	1,660.99
September 1, 1959	2,495.41
October 19, 1959	1,391.70
January 19, 1960	12.88
January 21, 1960	1,457.38
Total	\$20,605.53

[fol. 7] Attached hereto as Exhibit "A" and incorporated herein is an itemized list of the foregoing payments by Todd of such taxes, penalties and interest, as well as the premiums on which such tax was levied.

III.

That the foregoing statute, Article 21.38, Section 2 (c) of the Texas Insurance Code, and the tax attempted to be

levied thereby, is unconstitutional, void and unenforceable because:

- (1) The taxing provision of Article 21.38 et seq. of the Texas Insurance Code is unconstitutional, invalid and void under the Texas and the United States Constitution;
- (2) Such tax is invalid and void because it takes Todd Shipyards Corporation's property without due process of law in violation of Section 1 of the Fourteenth Amendment of the Constitution of the United States and Section 19, Article 1 of the Constitution of the State of Texas;
- (3) Such tax is invalid and void because, among other things, it deprives Plaintiff of Plaintiff's liberty to contract, which liberty is guaranteed by Section 1 of Amendment 14 of the Constitution of the United States;
- (4) Such tax is invalid and void as a violation of the rules set forth in *St. Louis Cotton Compress Co. v. The State of Arkansas*, 260 U.S. 347 (1922), because among other things, such tax interferes with activities carried on outside and beyond the jurisdiction of the State of Texas by Plaintiff, a non-resident corporation, with London insurance companies, domiciled in England, a foreign country, and New York insurance brokers domiciled in New York, New York, and the State of Texas has no jurisdiction to tax, regulate or otherwise burden Plaintiff's New York contracts, transactions and payment of premiums.
- (5) The tax levied violates Sections 1 and 2 of Article VIII of the Constitution of Texas because the tax is not equal and uniform upon members of the same class, which class is composed of persons engaging in the taxable transaction of paying premiums on insurance policies or agreements covering Texas risks, but instead arbitrarily and invidiously discriminates against Todd Shipyards

Corporation by taxing Todd at the rate of 5% of gross premiums paid, which is much more than the tax imposed for insuring in authorized companies.

- (6) Such tax denies Todd Shipyards Corporation the equal protection of the laws in violation of Section 1 of the Fourteenth Amendment of the United States, because the tax constitutes an arbitrary, unreasonable and invidious discrimination against non-resident or unauthorized insurance companies and persons, corporations and associations paying premiums on Texas risks to unauthorized insurers, and in favor of authorized insurance companies and those paying premiums on Texas risks to authorized insurers.

[fol. 8]

- (7) Such tax is invalid and void as a violation of each of the rules set forth in *H. Ruor Co. vs. Texas Citrus Commission*, 151 Tex. 182, 247 S.W. 2d 231 (1952), because, among other things, such tax is not levied equally and uniformly upon all persons engaging in the taxable transaction of purchasing insurance or paying premiums covering Texas risks.
- (8) Such tax is invalid and void as a violation of the rules set forth in *Wheeling Steel Corporation v. Glander*, 337 U.S. 562 (1948), because, among other things, such tax constitutes an arbitrary, unreasonable and invidious discrimination against those paying premiums to non-residents of Texas or to insurance companies not authorized to do business in Texas and in favor of those paying premiums to residents of Texas or to insurance companies authorized to do business in Texas.
- (9) The tax is an unconstitutional attempt to authorize the levy and collection of an occupation tax without providing that one-fourth ($\frac{1}{4}$) of the revenues therefrom shall be set apart annually for the benefit of the public free schools of Texas

as required by Article 7, Section 3 of the Texas Constitution.

IV.

All insurance agreements material to this suit are listed in Exhibit "B" which is attached hereto and incorporated herein. All such insurance agreements were entered into in New York City, New York, and all premiums on such policies or agreements were and are payable in New York and have in fact been paid in New York, the domicile of Plaintiff. Such policies were negotiated in New York by Plaintiff's New York agent through Canadian and New York brokers and were issued by Lloyds of London and the Institute of London Underwriters, insurers domiciled in London, England. Lloyds of London and the Institute of London Underwriters have not solicited insurance business in Texas from Plaintiff's Texas plants, and such insurers have no offices and no agents in Texas, are not admitted to do business in Texas, furnish no annual reports to the State Board of Insurance of the State of Texas, or to its predecessor, the Board of Insurance Commissioners, and are in no way subject to the jurisdiction or regulation of the State of Texas. There is no communication between Todd's Texas plants and the brokers or insurers. All negotiation, confirmation, and acceptance of insurance and reinsurance on behalf of Todd Shipyards Corporation is in New York. All claims losses are payable in New [fol.9] York and have in fact been paid in New York. Lloyds of London and the Institute of London Underwriters do not investigate Todd's loss claims in Texas. Long before this Taxing Act was passed, Todd Shipyards Corporation had made large investments in Texas in real and personal property essential to the conduct of its business, and it has insured by the types of agreements set forth on Exhibit "B" and has held and operated such property ever since.

V.

That each and all of the facts stipulated in the Stipulation of Facts and supplemental Stipulation of Facts filed herein is hereby adopted and plead in the alternative.


VI.

That each of the above listed payments was duly made under protest in accordance with the Texas Protest Statute, Article 7057b, and this suit has been duly filed within 90 days of each protest payment and in accordance with the Texas Protest Statute.

Wherefore, Premises Considered, Plaintiff prays that the Defendants, and each of them, be duly cited to appear and answer herein and that upon final hearing hereof Plaintiff do have and recover of and from the Defendants, and each of them, the just sum of \$20,605.53, together with interest as provided for under the terms of the Texas Protest Statute, Article 7057b, and that the State Treasurer and Comptroller of Public Accounts be ordered and directed to comply with the terms and provisions of such Protest Statute, that Plaintiff recover all costs incurred herein, that the validity of such statute and its application to each of such premium payments be fixed, declared and established by a declaratory decree, and that Plaintiff have such other and further relief, general and special, as it may be entitled to receive, either at law or in equity.

Liddell, Austin, Dawson & Huggins, By Charles R. Vickery, Jr., By Meyer W. Witt, Attorneys for Plaintiff, 510 Gulf Building, Houston 2, Texas.

EXHIBIT "B" TO PLAINTIFF'S EIGHTH AMENDED
ORIGINAL PETITION

(See opposite) 

[fol. 10]

**EXHIBIT "B" TO PLAINTIFF'S EIGHTH AMENDED
ORIGINAL PETITION**

<u>Polic</u>	<u>Period</u>	<u>Risk</u>
Lloyd's London #542/A. 9350) Institute of) London Underwriters do)	6/6/56 to 6/5/57	Hull & Machinery Ins. Todd-owned Dry Docks
Lloyd's London #542/H. 3193) Institute of) London Underwriters do)	9/13/59 to 9/13/60	Hull & Machinery Ins. Leased Navy Dry Dock "AFM-1"
Lloyd's London #542/57 H46-/JX) Institute of) London Underwriters)	5/17/57 to 5/17/60	Collision, Flood, Subsidence & Collapse Ins. - Piers, Bulk- heads and Launching ways
*Pro Forma of Lloyd's London and Institute of London Underwriters #576/87514	9/1/58 to 9/1/59	Industrial Work Property Damage Insurance
Lloyd's London #542/59/137084 Institute of) London Underwriters do)	5/1/59 to 5/1/60	Products Liability Ins.-First Excess Cover
Lloyd's London #542/59/137084 Institute of) London Underwriters do)	5/1/59 to 5/1/60	Products Liability Ins.-Second Excess Cover
Lloyd's London #576/89399) Institute of) London Underwriters do)	Repair period	Builders Risk Ins. covering S/S "ATZCAPOTZALCO" while undergoing repairs
Lloyd's London #576/86411) Institute of) London Underwriters do)	Repair period	Builders Risk Inc. covering S/S "VANA CRUL" while under- going repairs
Lloyd's London #576/86410) Institute of) London Underwriters do)	Repair period	Builders Risk Inc. covering S/S "POINARO DEL MARCO 11" while undergoing repairs
Lloyd's London #576/91100) Institute of) London Underwriters do)	Repair period	Builders Risk Ins. covering S/S. "AZTECA" during repair period
Pro Forma of Lloyd's London and Institute of London Underwriters #576/87974)	Repair period	Builders Risk Ins. covering S/S "GENERAL LALARO CARRERAS" while undergoing repairs
Pro Forma of Lloyd's London and Institute of London Underwriters #576/90158)	Construction period	Builders Risk Inc. covering Hull No. 179 during con- struction
Lloyd's London #576/89311) Institute of) London Underwriters do)	Construction period	Builders Risk Inc. covering Hull No. 180 during construc- tion
Lloyd's London #576/86390) Institute of) London Underwriters do)	Construction period	Builders Risk Ins. covering Hulls Nos. 181 and 182 during construction

[fol. 11]

Pro Forma of Lloyd's London and Institute of London Underwriters #573/3055	Construction period	Builders Risk Ins. covers Hull No. 183 during con- struction
Pro Forma of Lloyd's London and Institute of London Underwriters #575/88884)	Construction period	Builders Risk Ins. covers Hull No. 184 during con- struction
Lloyd's London #575/87389) Institute of #57/81902) London Underwriters do)	Construction period	Builders Risk Ins. covers Hulls Nos. 185 to 187 dur- ing construction
Pro Forma of Lloyd's London and Institute of London Underwriters #576/88335	Construction period	Builders Risk Ins. covers Hulls Nos. 202 and 203 during construction
Lloyd's London #576/87740) Institute of) London Underwriters do)	Construction period	Builders Risk Ins. covers Hull No. 204 during con- struction
Pro Forma of Lloyd's London and Institute of London Underwriters #576/11301	Construction period	Builders Risk Ins. covers Hulls Nos. 205, 207 and during construction
Lloyd's London #576/12537) Institute of) London Underwriters do)	Construction period	Builders Risk Ins. covers Hull No. 208 during con- struction
Lloyd's London #576/88180) Institute of) London Underwriters do)	Construction period	Builders Risk Ins. covers Hull No. 213 during con- struction
Pro Forma of Lloyd's London and Institute of London Underwriters #576/88503	Construction period	Builders Risk Ins. covers Hull No. 214 during con- struction
Pro Forma of Lloyd's London and Institute of London Underwriters #576/12550	Construction period	Builders Risk Ins. covers Hulls Nos. 215 and 217 during construction
Lloyd's London #576/1111) Institute of) London Underwriters)	Repair Period	Builders Risk Ins. covers Hull No. 216 during repair carried out after construc- tion and delivery had been completed
Lloyd's London #576/91260) Institute of) London Underwriters do)	Construction Period	Builders Risk Ins. covers Hulls Nos. 232 and 233 during construction
Lloyd's London #576/12511) Institute of) London Underwriters do)	Construction period	Builders Risk Ins. covers Hull No. 240 during construction

* Policies for later year or years not available, having been sent to underwriters in connection with collection of losses.

EXHIBIT "A" TO PLAINTIFF'S EIGHTH AMENDED
ORIGINAL PETITION

[fol. 12]

<u>TYPE OF INSURANCE</u>	<u>DATE PAID</u>	<u>PREMIUM INVOLVED</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
Dry Dock Insurance	7-3-57	28,430.25	1421.51	355.38	110.99	1887.88
	7-3-58	28,430.25	1421.51	355.38	4.38	1781.27
Piers & Bulkhead Coll.	7-19-57	4,000.00	200.00	50.00	14.96	264.96
	9-4-57	3,375.36	168.77	42.19	10.99	221.95
	7-9-58	8,000.00	400.00	100.00	.74	500.74
Industrial Work- Property Damage	12-2-57	199.18	9.96	2.49	.47	12.92
	3-19-58	2,515.78	125.79	31.45	3.13	160.37
Builders Risk Insurance	8-5-57	870.53	43.53	10.88	2.83	57.24
	2-11-58	211.15	10.56	2.64	.34	13.54
Excess Prod. Liability	2-7-58	104.50	5.23	1.31	.17	6.71
			<u>3806.56</u>	<u>951.72</u>	<u>149.00</u>	<u>4907.58</u>

TODD SHIPYARDS CORPORATION
(GALVESTON DIVISION)
SCHEDULE OF TAX, PENALTY AND INTEREST
ENGLISH UNDERWRITERS
SEPTEMBER 16, 1958

Type of Insurance	Date Paid	Premiums Involved	Tax	Penalty	Interest	Total
Dry Dock Ins.(Incl.Strikes etc.) D.D.#1 & #2	7/24/57	\$ 32,800.94	\$1,640.00	\$ 410.00	\$ 120.98	\$ 2,170.98
Dry Dock Ins.(Incl.Strikes etc.) D.D.#1 & #2	7/ 3/58	32,800.94	1,640.00	410.00	5.05	2,055.05
Dry Dock Ins.(Incl.Strikes etc.) AFDM-1	9/18/57	19,500.47	975.00	243.75	60.70	1,279.45
Plant and/or Piers - Collision, etc.	6/28/57	9,900.00	495.00	123.75	39.16	657.91
- Reinstatement of Loss						
5/20/57	6/27/58	76.63	3.82	.96	.02	4.80
- Reinstatement of Loss						
9/20/57	7/11/58	5.43	.26	.07	-	.33
Plant and/or Piers - Collision, etc.	7/11/58	10,968.75	548.44	137.11	.79	686.34
Plant and/or Piers - Reinstatement of Loss						
1/16/57	4/ 4/58	12.63	.52	.15	.01	.79
- Reinstatement of Loss						
11/2/55	4/ 4/58	53.79	2.68	.67	.06	3.41
Industrial Work Property Damage	12/ 2/57	9.32	.47	.12	.02	.61
Industrial Work Property Damage	3/19/58	100.00	5.00	1.25	.12	6.37
Products Liability - Bodily Injury & Property Damage	1/31/58	187.58	9.38	2.35	.32	12.05
Hull & Machinery Inc. P & I Port Risk - Potrero del Llano	10/ 4/57	322.74	16.13	4.03	.95	21.11
Hull & Machinery Inc. P & I Port Risk - Vera Cruz	10/ 4/57	242.10	12.10	3.03	.72	15.85
Hull etc. Port-Repair - General Lazaro Cardenas	4/18/58	906.25	45.31	11.33	.85	57.49
Hull ect. Port-Repair - General Lazaro Cardenas	6/27/58	35.00	1.75	.44	.01	2.20
		<u>\$107,222.57</u> *	<u>\$5,325.25</u>	<u>\$1,349.02</u>	<u>\$ 222.76</u>	<u>\$ 6,974.74</u>

* Premiums Involved total include British Stamp Tax Paid.

TODD SHIPYARDS CORPORATION
(GALVESTON DIVISION)
SCHEDULE OF TAX, PENALTY AND INTEREST
ENGLISH UNDERWRITERS
OCTOBER 1, 1958

<u>Type of Insurance</u>	<u>Date Paid</u>	<u>Premiums Involved</u>	<u>Tax</u>	<u>Penalty</u>	<u>Interest</u>	<u>Total</u>
Dry Dock Ins. (Incl. Strikes, etc.) AFDM-1	9-29-58	\$19,500.47	\$975.00	0.00	0.00	\$975.00
Hull & Machinery Ins. P & I Port/Builders Risk - Atzcapotzalco	9-26-58	200.00	10.00	0.00	0.00	10.00
		<u>\$19,700.47*</u>	<u>\$985.00</u>	<u>0.00</u>	<u>0.00</u>	<u>\$985.00</u>

* Premiums Involved total include British Stamp Tax Paid

TODD SHIPYARDS CORPORATION
(PRODUCTS DIVISION)

OCTOBER 13, 1958

[fol. 15]

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<u>TYPE OF INSURANCE</u>	<u>DATE PAID</u>	<u>PREMIUM INVOLVED</u>	<u>TAX</u>
Builder's Risk	10/14/58	\$713.36	\$35.67
Builder's Risk	10/14/58	<u>97.41</u>	<u>4.87</u>
		<u>\$810.77</u>	<u>\$40.54</u>

TODD SHIPYARDS CORPORATION
(PRODUCTS DIVISION)

JANUARY 19, 1959

<u>Type of Insurance</u>	<u>Date Paid</u>	<u>Premium Involved</u>	<u>Tax</u>	<u>Interest</u>	<u>Penalty</u>	<u>Total</u>
Builder's Risk	1/19/59	\$12,491.08	\$624.55	\$0.00	\$0.00	<u>\$624.55</u>

[fol. 16]

TODD SHIPYARDS CORPORATION
(PRODUCTS DIVISION)

FEBRUARY 12, 1959

[fol. 17]

18

<u>Type of Insurance</u>	<u>Date Paid</u>	<u>Premium Involved</u>	<u>Tax</u>	<u>Interest</u>	<u>Penalty</u>	<u>Total</u>
Industrial Work Property Damage	2/12/59	\$500.00	\$25.00	\$0.00	\$0.00	\$25.00

TODD SHIPYARDS CORPORATION
(PRODUCTS DIVISION)

MARCH 31, 1959

<u>TYPE OF INSURANCE</u>	<u>DATE PAID</u>	<u>PREMIUM INVOLVED</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
Builder's Risk	3/31/59	\$ 86.02	\$ 4.30	\$0.00	\$0.00	\$ 4.30
"	"	<u>205.27</u>	<u>10.26</u>	0.00	0.00	<u>10.26</u>
			<u>\$14.56</u>			<u>\$14.56</u>

[fol. 18]

TODD SHIPYARDS CORPORATION
(PRODUCTS DIVISION)

APRIL 8, 1959

<u>Type of Insurance</u>	<u>Date Paid</u>	<u>Premium Involved</u>	<u>Tax</u>	<u>Penalty</u>	<u>Interest</u>	<u>Total</u>
Builder's Risk *	4/8/59	\$304.03	\$15.20	\$0.00	\$0.00	<u>\$15.20</u>

TODD SHIPYARDS CORPORATION
(GALVESTON DIVISION)
SCHEDULE OF TAX, PENALTY AND INTEREST
ENGLISH UNDERWRITERS
AUGUST 20, 1959

<u>Type of Insurance</u>	<u>Date Paid</u>	<u>Premium Involved</u>	<u>Tax</u>	<u>Penalty</u>	<u>Interest</u>	<u>Total</u>
Industrial Work Property Damage	5-31-59	\$ 10.69	\$.53	\$.13	\$ -	\$.66
Hull & Machinery Incl. P & I Port/Builders Risk - Azteca	5-1-59	322.58	16.13	4.03	.17	20.33
Dry Dock Ins. (Incl. Strikes, etc.) D.D. #1 & #2	7-10-59	<u>32,800.94</u>	<u>1,640.00</u>	<u>-</u>	<u>-</u>	<u>1,640.00</u>
		<u>\$33,134.21</u>	<u>\$1,656.66</u>	<u>\$4.16</u>	<u>\$.17</u>	<u>\$1,660.99</u>

[fol. 20]

TODD SHIPYARDS CORPORATION
(PRODUCTS DIVISION)

AUGUST 31, 1959

[fol. 21]

<u>TYPE OF INSURANCE</u>	<u>DATE PAID</u>	<u>PREMIUM INVOLVED</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
Dry Dock	7/9/59	\$26,251.46	\$1,312.57	.00	.00	\$1,312.57
"	"	2,180.92	109.05	.00	.00	109.05
Piers & Bulkhead Collision	8/27/59	7,500.00	375.00	.00	.00	375.00
Builders Risk	7/13/59	62.29	3.11	.00	.00	3.11
Pre-Keel	"	860.13	43.01	.00	.00	43.01
Delivery Trip	"	4,248.98	212.45	.00	.00	212.45
Builders Risk	8/24/59	3,660.49	183.02	.00	.00	183.02
"	7/16/59	385.56	19.28	.00	.00	19.28
"	"	2,535.91	126.80	.00	.00	126.80
"	"	1,595.20	79.76	.00	.00	79.76
"	"	13.35	.67	.00	.00	.67
"	7/13/59	613.84	30.69	.00	.00	30.69
		<u>\$49,908.13</u>	<u>\$2,495.41</u>	<u>.00</u>	<u>.00</u>	<u>\$2,495.41</u>

TODD SHIPYARDS CORPORATION
(GALVESTON DIVISION)

OCTOBER 19, 1959

<u>Type of Insurance</u>	<u>Date Paid</u>	<u>Premium Involved</u>	<u>Tax</u>	<u>Penalty</u>	<u>Interest</u>	<u>Total</u>
Pier & Bulkhead Collision, Flood, Subsidence and Collapse	8/31/59	9,084.00	454.20	.00	.00	454.20
Hull, etc. (incl. S.R. & C.C.) Marine 3 Section Dry Dock AFD-1)	9/30/59	<u>18,750.00</u>	<u>937.50</u>	<u>.00</u>	<u>.00</u>	<u>937.50</u>
		<u>\$27,834.00</u>	<u>\$1,391.70</u>	<u>.00</u>	<u>.00</u>	<u>\$1,391.70</u>

[fol. 22]

Todd Shipyards Corporation
(Galveston Division)
Schedule of Tax, Penalty and Interest
English Underwriters
December 17, 1959

<u>Type of Insurance</u>	<u>Date Paid</u>	<u>Premium Involved</u>	<u>Tax</u>	<u>Penalty</u>	<u>Interest</u>	<u>Total</u>
Industrial Work Property Damage	11-3-58	100.00	5.00	1.25	.38	6.63
do	12- -59	125.00	<u>6.25</u>	<u>-</u>	<u>-</u>	<u>6.25</u>
			<u>\$11.25</u>	<u>\$1.25</u>	<u>\$.38</u>	<u>\$12.88</u>

TODD SHIPYARDS CORPORATION
(PRODUCTS DIVISION)

JANUARY 20, 1960

[fol. 24]

<u>TYPE OF INSURANCE</u>	<u>DATE PAID</u>	<u>PREMIUM INVOLVED</u>	<u>TAX</u>
Builders Risk - Hull No. 179	12/23/59	\$ 979.58	\$ 48.98
" " " " 183	"	1,468.92	73.45
" " " " 244	"	8,753.38	437.67
" " " " 183	"	13,530.00	676.50
" " " 206-7-8	12/10/59	341.07	17.05
" " " 218-37	"	462.93	23.14
" " " "	"	945.16	47.26
" " " 244	"	943.44	47.17
" " " 238-9	"	1,723.21	86.16
		<u>\$29,147.69</u>	<u>\$1,457.38</u>

[fol. 25]

[File endorsement omitted]

[fol. 30]

No. 112,081

IN THE 53RD JUDICIAL DISTRICT COURT OF
TRAVIS COUNTY, TEXAS

January Term, A. D. 1960

TODD SHIPYARDS CORPORATION,

vs.

BOARD OF INSURANCE COMMISSIONERS, et al.

Statement of Facts

Before Hon. J. Harris Gardner, Judge of said Court.

APPEARANCES:

Charles R. Vickery, Jr., and Meyer W. Witt, both of the firm of Liddell, Austin, Dawson & Huggins, Houston, Texas; Attorneys for Plaintiff.

Hon. Bob Eric Shannon, and Hon. Fred Werkenthin, Assistant Attorneys General of the State of Texas; Attorneys for Defendants.

Be It Remembered that on the 2nd day of February, 1960, the same being one of the regular days of the January, 1960, Term of the 53rd Judicial District Court of Travis County, Texas, came on to be heard the above entitled and numbered cause, whereupon the following proceedings were had:

[fol. 31]

Tuesday, February 2, 1960

Morning Session—9:00 A. M.

Plaintiff's Direct Evidence

The Court: All right; you may go ahead.

Mr. Vickery: Mrs. Gardner, please.

MRS. VIRGINIA GARDNER, called as a witness by plaintiff, being duly sworn by the Clerk, testified as follows:

Mr. Vickery: Would you mark this Plaintiff's Exhibit 1, Plaintiff's Exhibit 2, and Plaintiff's Exhibit 3. Your Honor, the Stipulation has been marked Plaintiff's Exhibits 1, 2 and 3, which we offer in evidence.

(Thereupon the Stipulations referred to were marked for identification and received in evidence as Plaintiff's Exhibits Nos. 1, 2 and 3, and same accompany this Statement of Facts as original exhibits, by agreement of counsel and order of the Court.)

Mr. Vickery: Your Honor, we had the original stipulation, and then the lawyers had some afterthoughts, and we got some supplemental stipulations, so they are marked 2 and 3. I will read Plaintiff's Exhibit No. 1.

[fol. 32] (Reading exhibit to the Court.)

Mr. Vickery: Your Honor, we would like to introduce in its entirety the deposition of Mr. Costello, taken in New York City on November 12, 1959, by Mr. Shannon, the Attorney General, and Todd's New York counsel. There is nothing really in here that is not covered by the stipulation, and if it is all right with the Court, we won't read it; we will just introduce it and let the record show its introduction. We offer it.

The Court: All right.

(Thereupon the deposition referred to was received in evidence as a part of the record, and said deposition accompanies this Statement of Facts under separate cover by agreement of counsel and order of the Court.)

Direct examination.

Questions by Mr. Vickery:

Q. Mrs. Gardner, I am sorry we took all that time. Would you state your name, please, ma'am?

A. Virginia Gardner.

Q. Mrs. Gardner, do you live here in Austin?

A. Yes, I do.

Q. And what position do you hold?

[fol. 33] A. I am tax analyst for the State Board of Insurance.

Q. And how long have you held that position for the State Board of Insurance?

A. Well, about seven or eight years I have been checking taxes.

Q. What are your duties in that position?

A. I check and clear all the taxes that are paid by the licensed insurance companies and by individuals seeking excess insurance under 21.38, Section (e).

Q. I understand that under Texas Insurance Code, Article 21.38, Section 2, Subsection (e)—

A. Yes.

Q. —you handle—do you handle those collections under that statute?

A. Yes, I do.

Q. Who transmits the moneys collected to the Comptroller?

A. Well, Mr. Swartz's division, the Comptroller of the Board.

Q. Do you fill out the forms that are forwarded?

A. Yes, I do.

Q. Do you have some of those forms with you?

A. No, sir, I am sorry, I do not.

Q. On those forms that you send to the Comptroller, what classification do you put on this tax under 21.38(2)(e)?

A. Well, if it is just filled out that it is the gross premiums tax, and then on this receipt we have two sections; on this receipt we clear it to this Fund 120. This [fol. 34] is the receipt for the money that comes in.

Q. You classify it as 155 or 133?

A. Just a minute; let me see what you are talking about. This is Fund 120, and it is 155 now. This account number has been changed. It was 133, and it is now 155.

Q. Do you transmit to the Comptroller the taxes collected under Section 2(e) of Article 21.38, under Account No. 133?

A. Well, it is now 155.

Q. All right. Did you—when was it changed from 133 to 155?

A. I would say probably September 1st, about that time, of this past year, 1959. Up until then it was 133.

Q. From June of 1957 until September of '59, did you transmit your collections under this Article, Subsection 2(e) of Article 21.38, under the Account No. 133?

A. Yes—I did.

Q. And since September 1st, 1955 (1959) have you transmitted those same payments to the Comptroller under the Account No. 155?

A. I have. I am not sure of the date.

Q. Well, you have either done it under one or the other numbers?

A. Yes, 133 or 155.

Q. And have you designated those collections under this statute, Subsection 2(e), Article 21.38, for Fund 120?

[fol. 35] A. I have.

Q. Now, have you ever forwarded any collection under this Statute 21.38(2)(e) to any other fund?

A. No, sir.

Q. Have you ever sent it to the Comptroller under any other classification other than 133 or 155?

A. No, sir.

Q. And you have done that uniformly since the beginning of the tax?

A. Yes, sir.

Q. Do you recall that tax was first collected by your Department in the year '57?

A. It was about September of 1957.

Q. Has anybody in the Board of Insurance ever asked you to change the account number or the fund number to which you send those funds?

A. No, sir.

Q. Has Mr. Swartz known how you were classifying them?

A. Yes, sir.

Q. Has Mr. Jackson and the members of the Board of Insurance?

A. I do not know, sir. I haven't discussed it with him.

Mr. Vickery: No further questions.

Mr. Shannon: I have no questions.

(Witness excused.)

[fol. 36] FRANK SWARTZ, called as a witness by plaintiff, being duly sworn by the Clerk, testified as follows:

Direct examination.

Questions by Mr. Vickery:

Q. Would you state your name, please, sir?

A. Frank Swartz.

Q. Mr. Swartz, do you hold a position—how do you spell Swartz?

A. S-w-a-r-t-z.

Q. Do you hold a position with the State Board of Insurance, sir?

A. Yes, sir.

Q. And what is that position?

A. Comptroller.

Q. And how long have you been the Comptroller of the—is that comptroller, c-o-m-p, or controller, c-o-n?

A. Comptroller, c-o-m-p.

Q. How long have you held the position of Comptroller of the State Board of Insurance?

A. Well, I don't know how long that has been in, but it has been a good many years. I have been an accountant there since 1939.

Q. And have you been Comptroller at all times since June 1, '57?

A. Yes, sir.

[fol. 37] Q. Did you bring with you this morning the Eighty-Fourth Annual Report of the State Board of Insurance?

A. Yes, sir.

Mr. Vickery: Could we mark that, please, as Plaintiff's Exhibit No. 4?

(Thereupon the document referred to was marked for identification as Plaintiff's Exhibit No. 4.)

Q. Mr. Swartz, would you mind turning to page 59 of Plaintiff's Exhibit 4?

A. 69 or 59?

Q. 59; excuse me.

A. Yes.

Q. Do you have page 59?

A. Yes, sir.

Q. Page 59 is a Statement of Revenues Collected During the Year 1958-59 by the State Board of Insurance, is it not?

A. Yes, sir.

Q. Your insurance—Board of Insurance years begin and end on August 31st, do they not?

A. Yes, sir.

Q. Now, in the first column there you have Taxes Collected, do you not?

A. Yes, sir.

Q. And in the first entry on there is "Company Occupation Taxes"?

[fol. 38] A. Yes, sir.

Q. And that was cleared to the Omnibus Fund 120?

A. Yes, sir.

Q. And that figure was twenty-eight million, five hundred twelve thousand, and some odd dollars?

A. Yes, sir.

Q. Now, I will ask you if those occupation taxes that you report on page 59 are not itemized in detail on page 68 of that report, Plaintiff's Exhibit 4?

A. 58?

Q. 68; excuse me.

A. Yes, sir.

Q. Is one of the lists of those occupation taxes that you have itemized on page 68, "Insurance Purchased from Unauthorized Insurers"?

A. Yes, sir.

Q. And that is the last one on the list on page 68?

A. Well, the last tax, yes, sir. The other is retaliatory fees, yes.

Q. Now, this Insurance Purchased from Unauthorized Insurers on page 68 is the one that Mrs. Gardner was testifying about, Subsection 2(e) of Article 21.38, is it not?

A. Yes, sir.

Q. I beg your pardon?

A. Yes, sir.

Q. And you in your annual report have always reported [fol. 39] it as occupation tax, have you not?

A. Yes, sir.

Q. And you did that here in August of 1959, did you not?

A. Yes, sir.

Q. And you are still doing it today, are you not?

A. Yes, sir.

Q. Now, do you have your report for—we are going to put this in the court record if you don't mind.

A. Yes. Which one now?

Q. May we have this one for the court record?

A. Yes, sir.

Q. The Eighty-Third Annual Report.

A. Yes, sir.

Mr. Vickery: Will you mark this, please, as Plaintiff's Exhibit No. 5?

(Thereupon the document referred to was marked for identification as Plaintiff's Exhibit No. 5.)

Q. Can you identify Plaintiff's Exhibit 5, Mr. Swartz, as a copy of the Eighty-Third Annual Report of the State Board of Insurance for the year ending August 31, '58?

A. Yes, sir.

Q. Would you please turn to page 70? On the top of page 70 of Plaintiff's Exhibit 5 is a Statement of Revenues Collected by the Insurance Commission in the year '57-58, is it not, Mr. Swartz?

[fol. 40] A. Yes, sir.

Q. Is the top entry on page 70 of Plaintiff's Exhibit 5, Company Occupation Taxes cleared to Omnibus Fund 120 in the amount of twenty-six million some odd dollars?

A. Yes, sir.

Q. All right, sir. Now, did you bring with you a break-

Mr. Vickery: Mark this, please, as Plaintiff's Exhibit 6.

(Thereupon the document referred to was marked for identification as Plaintiff's Exhibit No. 6.)

Q. Mr. Swartz, the Plaintiff's Exhibit 5 did not contain an itemized list of those occupation taxes cleared to the Comptroller, did they, sir?

A. No, sir.

Q. Is Plaintiff's Exhibit 6 an itemized list of the twenty-six some odd million dollars worth of occupation taxes collected by the Insurance Commission in the '57-58 year?

A. Yes, sir.

Q. And does it show a collection from insurance pur-[fol. 41] chased from unauthorized insurers as \$22,145.46?

A. Yes, sir, that is right.

Q. Then you reported this 21.38(2)(c) tax as an occupation tax for '57-58, did you not?

A. Yes, sir.

Mr. Vickery: We offer Plaintiff's Exhibits 4, 5, and 6.

(Thereupon the documents which had been previously marked for identification as Plaintiff's Exhibits Nos. 4, 5, and 6, respectively, were received in evidence, and same accompany this Statement of Facts as original exhibits by agreement of counsel and order of the Court.)

Q. You heard Mrs. Gardner testify that she transfers these taxes under this Article 21.38(2)(c), to the Comptroller under the Classification 133, and later 155, did you not?

A. Yes, sir.

Q. Are the Classifications 133 and 155 occupation tax classifications?

A. Yes, sir. As well as I remember, it is. I am pretty sure it is.

Q. Do you know how these taxes happened to be forwarded to the Comptroller under the classification of occupation taxes?

A. No, I don't know.

Mr. Vickery: No further questions.

[fol. 42] Mr. Shannon: I have no questions.

The Court: All right; you are excused.

(Witness excused.)

Mr. Vickery: Mr. Jackson, please.

PENN J. JACKSON, called as a witness by plaintiff, being duly sworn by the Clerk, testified as follows:

Direct examination.

Questions by Mr. Vickery:

Q. Would you state your name, please, sir?

A. Penn J. Jackson.

Q. Mr. Jackson, do you live here in Austin now?

A. Well, my legal residence is in Clebourne, but I work here about six days a week, and have a residence here.

Q. And what position do you hold here, sir?

A. Chairman of the State Board of Insurance.

Q. And how long have you held that position as Chairman of the State Board of Insurance?

A. Since the last few days of June, 1957.

Q. Then you assumed your duties at about the time the statute that we are talking about was passed?

A. Well, it was after the Legislature adjourned.

Q. Shortly afterwards? You were a judge for many years, were you not?

[fol. 43] A. Yes, sir.

Q. And you are a licensed attorney, are you not?

A. Yes, sir.

Q. What duties and responsibilities does the State Board of Insurance have in connection with determining the nature and classification of the moneys collected under Article 21.38(2)(e), of the Insurance Code?

A. Well, that is a broad question. Of course, the State Board of Insurance under Senate Bill 222, to reorganize the insurance regulatory authority, vested all authority and responsibilities for the regulation of insurance in Texas in a three-member State Board of Insurance, and then it describes what our primary duties are. Although we have full responsibility, we appoint a Commissioner,

down or itemization of the moneys you reported as occupation taxes as comprised in that twenty-six million?

A. Yes, sir.

Q. We better mark this as Plaintiff's Exhibit 6, because it was not a part of this report.

A. Okay.

who has executive and administrative duties, and as to his acts the Board is an appellate body. Generally you would say that the duties of the State Board of Insurance, in the narrow sense, the three-member Board, is on matters of policy in making the rules, in making the rates, and hearing appeals from the Commissioner. Now, as to the specific question you asked me, I think that would be administrative. It has been handled that way, and the State Board of Insurance in its narrow sense of the three-member Board would have appellate jurisdiction. If somebody wanted to appeal from an act or decision of the Commissioner, they would appeal to the Board.

[fol. 44] Q. Then you think it is the responsibility of the Commissioner to make the decision as to the nature of moneys collected under this statute; is that correct?

A. Well, I think so. If anybody didn't like what he decided, they could have brought it before the Board.

Q. Was that ever done?

A. No, sir.

Q. Has the Board ever taken any official action as to the nature or classification of moneys collected under this Statute 21.38(2)(e)?

A. No, sir.

Q. Did you know prior—when did you first learn that these moneys were being treated as an occupation tax by the State Board of Insurance?

A. I think probably I learned it for sure this morning when I heard the testimony.

Q. Then you had no prior knowledge of it prior to this morning?

A. No, not personally.

Q. Then you didn't know that one-fourth of this money was being paid into the public free school fund?

A. I don't think I did. I had never had an occasion to look into the—

Q. Do you have any regulation on where Todd buys insurance,—where the plaintiff buys its insurance?

A. Have any what?

[fol. 45] Q. Regulation; do you try in any way to regulate from whom they buy?

A. I don't think so, not that I know of. There are statutes on the subject perhaps, but we have no specific rules on that that I know of.

Q. Well, what statutes do you have?

Mr. Shannon: Your Honor, we want to object.

Mr. Vickery: We will withdraw it, Your Honor.

Q. So far as you know, no attempt is made by the State Board of Insurance to regulate where or from whom Todd buys insurance; is that correct?

A. No, sir, not that I know of, except in so far as the statutes require duties to be performed in reference to such matters.

Mr. Vickery: No further questions.

Mr. Shannon: We have no questions.

(Witness excused.)

Mr. Vickery: Mr. Harrison.

WILLIAM A. HARRISON, a witness called by the plaintiff, being duly sworn by the Clerk, testified as follows:

Direct examination.

Questions by Mr. Vickery:

Q. Would you state your name, please, sir?

[fol. 46] A. William A. Harrison.

Q. Mr. Harrison, are you a resident of Austin?

A. Yes, sir.

Q. What position do you hold here in Austin in the State Government?

A. Commissioner of Insurance.

Q. And how long have you held the position of Commissioner of Insurance, Mr. Harrison?

A. Since June 21, 1957.

Q. Are you familiar with the Eighty-Third and Eighty-Fourth Annual Reports of the State Board of Insurance?

A. Yes, sir.

Q. I believe you signed those, did you not?

A. Yes, sir; they were prepared under my supervision.

Q. That is a statutory report that you make to the Governor, is it not?

A. That is correct.

Q. You have heard the testimony that these taxes collected under Code 21.38(2)(c),—you have heard the testimony that the moneys collected under 21.38(2)(c) are being forwarded to the Comptroller as occupation taxes, have you not?

A. Yes, sir.

Q. Did you participate in the decision or make the decision to so pay those—to so forward that money as occupation taxes?

[fol. 47] A. I made no specific decision on it, but I did know that it was being done.

Q. When did you first know that it was being done?

A. Now, your (2)(c) that you are talking about is the tax paid by the insured?

Q. Yes, sir, other than—

A. I knew that approximately at the time that was begun, which, I believe, was in the summer of 1957.

Q. Did that meet with your approval,—did you think it was the correct way to do it?

A. Well, I made no specific—I issued no specific approval, no order, or anything like that, but I knew it was being done that way.

Q. Well, your acquiescence in it was some measure of approval, was it not?

A. Well, possibly so. I think the State Comptroller has some responsibility in that matter, also.

Q. Well, did you leave it up to the Comptroller?

A. Yes, sir.

Q. And you left it up to the Comptroller pretty much as to how it would be classified?

A. Yes, sir.

Q. Then nobody in the Insurance Department really made the decision; is that correct?

A. I don't know that I can say no one did. I did not make a specific decision myself.

[fol. 48] Q. Did Mr. Conner make one, or do you know?

A. I don't know.

Q. Now, do you have—do you do anything to try to regulate where or from whom Todd Shipyards buys its insurance?

A. No, sir.

Mr. Vickery: No further questions.

Mr. Shannon: I have no questions.

(Witness excused.)

Mr. Vickery: Mr. Boone.

C. O. BOONE, called as a witness by plaintiff, being duly sworn by the Clerk, testified as follows:

Direct examination.

Questions by Mr. Vickery:

Q. Would you state your name, please, sir?

A. C. O. Boone.

Q. Mr. Boone, are you an Austin resident, sir?

A. Yes, sir.

Q. And what position do you hold here in Austin?

A. Assistant Treasurer of Accounting and Statistics with the State Comptroller's Department.

Q. And how long have you held that position with the Comptroller?

A. Approximately starting since October of 1942.

[fol. 49] Q. Since October of 1942?

A. That's right.

Q. Are you familiar with the occupation taxes that are cleared—what phrase do you use,—cleared or forwarded to the Treasurer and to the Comptroller by the State Board of Insurance?

A. We usually refer to those as deposits to, or actually they bring it to the Treasurer, and we refer to it as a deposit to those funds.

Q. Are you familiar with the deposits that the insurance companies made under the classification of 133 and 155?

A. Yes, sir.

Q. Did you bring with you this morning a list of the Comptroller's identifications of these different accounts?

A. I have.

Q. All right, sir. Do you recall the date of the change from Account No. 133 to 155?

A. It was effective September 1, 1959.

Q. What do your Comptroller's records show as Account No. 133 to be?

A. 133 is "Occupation Tax on Insurance Companies."

Q. And what is 155?

A. 155, the terminology we use now is "Insurance Companies Occupation Tax."

Q. Then the Comptroller's Account Nos. 133 and 155 have been assigned to Insurance Companies Occupation [fol. 50] Taxes, have they not?

A. That's right.

Q. Now, would you tell the Court, please, what has been the allocation of the moneys forward to or deposited with the Comptroller and the Treasurer under the Classifications 133 and 155 by the State Board of Insurance?

A. That is placed in the omnibus fund, and at the end of each month, or at the present time on the fifth working day, any collection that is made between the first and the fifth is allocated one-fourth to the public free school fund, which in our accounts is designated as the Available School Fund 2. The balance is left in omnibus, intermingled with other taxes, and then is allocated according to the requirement of the statutes giving priority to various funds.

Q. Have you set aside or transferred to the public free school fund one-fourth of the moneys that you have received from the State Board of Insurance under Classifications 133 and 155 since June 1st of 1957?

A. We have. All of the moneys that have went into the omnibus fund—now, I might explain that—by the Insurance Department, and they do designate the final revenue classification. They place that into suspense, and then clear from suspense to the omnibus fund. Any money that

is put into suspense under protest would not be transferred into the omnibus fund, and therefore no part of [fol. 51] that, but all of that type of money that is deposited into 133 or 155 is allocated one-fourth to available and then the balance as provided by statute.

Q. Now, when you say one-fourth is allocated to the available, what do you mean?

A. I mean the public free school fund as it is generally termed by the average person.

Q. The Comptroller merely calls the public free school fund the available fund, is that right?

A. That is the designation in the State's accounts on that particular type.

Q. And the available fund and the public free school fund are synonymous, are they not, as you use them?

A. That is true.

Q. Why have you transferred one-fourth of these occupation taxes received from the State Board of Insurance under Classifications 133 and 155 to the available or public free school fund?

A. The Constitution provides that one-fourth of all occupation taxes shall go to the public free schools.

Q. Then, you have done it because you are complying with the Constitutional requirement for occupation taxes?

A. That is right.

Q. Now, did you bring with you a copy of the Comptroller's Annual Report for 1959?

A. I do not have one with me.

[fol. 52] Q. I have one somewhere here.

A. If you will tell me what you want, I will be able to find one.

Q. I want to find the insurance occupation—the list of the State's receipts where it shows how much you got from each source.

A. You are talking about this omnibus tax clearance?

Q. Well, the list of revenues from the State.

A. All right. Here you have got your revenues from the State, these receipts, Table 3, starting—

Q. All right. Will you mark this, please, and we will offer it in evidence.

(Thereupon the document referred to was marked for identification as Plaintiff's Exhibit No. 7, and same was received in evidence, and accompanies this Statement of Facts as an original exhibit by agreement of counsel and order of the Court.)

Q. I hand you Plaintiff's Exhibit No. 7, Mr. Boone, and ask you if you can identify this as the 1959 Annual Report of the Comptroller of Public Accounts?

A. It is.

Q. Would you please turn to page 2? Does page 2 contain a table showing the State's receipts?

A. It does.

Q. Do you have in Table No. 1 an entry "Insurance Companies Occupation Tax"?

[fol. 53] A. We do.

Q. Under Insurance Companies Occupation Tax, what did the State receive during the fiscal year ending August 31, 1959?

A. \$28,512,716.43.

Q. What percentage was that of the entire receipts of the State?

A. .0250.

Q. Did you also show in the State's receipts another revenue called "Insurance Companies Regulation Tax"?

A. We did.

Q. And what was the amount included under Insurance Companies Regulation Tax?

A. \$1,831,870.02.

Q. What percentage of the State revenue was that?

A. .0016.

Q. Now, these moneys paid to you under Classifications 133 and 155 are included on page 2 of Plaintiff's Exhibit 7 as Insurance Companies Occupation Tax, are they not?

A. That is right.

Q. And those moneys that Mrs. Gardner sends to you under Classifications 133 and 155 are not included under the entry, "Insurance Companies Regulation Tax," on page 2 of Plaintiff's Exhibit 7, are they?

A. No, sir, they are not.

Mr. Vickery: No further questions.

[fol. 54] Cross examination.

Questions by Mr. Shannon:

Q. I have one or two questions.

A. All right, sir.

Q. They are in reference to the omnibus fund. Now, is it true that there are more than one type of tax cleared to the omnibus fund?

A. Deposited into omnibus, that is true.

Q. I see. Now, you said that one-fourth of the omnibus fund is allocated to the available fund?

A. That is true.

Q. Well, how do you know, then, which tax from the omnibus fund this one-fourth comes from? Doesn't it come into one fund and then you just withdraw one-fourth from the fund itself?

A. No, sir. This designation of 133 and 155 ties it down to a specific source. We carry separate ledger sheets on each of those sources to where that we can identify it by source. And then at the end of the month we make up a work sheet showing each of these types of taxes; and then, of course, go ahead and allocate them. On some of the taxes there is a provision that of the total amount that part of it shall be for regulation tax or enforcement tax. We figure that into it. But each group of those taxes that go into omnibus, there is a separate sub-account that is [fol. 55] carried into that to keep up with that specific type of tax.

Mr. Shannon: I have no further questions.

Redirect examination.

Questions by Mr. Vickery:

Q. Mr. Boone, there is no doubt that the money you received from the Insurance Board under Classifications 133 and 155 that one-fourth of those entire deposits went to the public free school fund, is there, sir?

A. Under the interpretation that has been put on it and followed there, we would refuse to accept them any other way, without the advice and the opinion of the Attorney General.

Q. Well, you have treated them as occupation taxes, have you not?

A. We have.

Q. And you have cleared one-fourth of it to the public free school fund as an occupation tax?

A. That is right.

Mr. Vickery: No further questions.

(Witness excused.)

Mr. Vickery: Plaintiff rests, Your Honor.

Mr. Shannon: That is all we have, Your Honor.

[fol. 56] The Court: All right.

Mr. Vickery: Plaintiff closes.

Mr. Shannon: Defendant closes.

Testimony Closed.

[fol. 57] Reporter's Certificate to foregoing transcript (omitted in printing).

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[fol. 61]

PLAINTIFF'S EXHIBIT No. 1

IN THE DISTRICT COURT OF TRAVIS COUNTY, TEXAS

53RD JUDICIAL DISTRICT

No. 112,081

TODD SHIPYARDS CORPORATION,

vs.

BOARD OF INSURANCE COMMISSIONERS, et al.

STIPULATION OF FACTS

It is stipulated and agreed by and between the parties hereto that each of the following recitations is true and correct and that this stipulation may be introduced in evidence on the trial of this case and as conclusive proof of each such recitation.

Article 21.38 of the Texas Insurance Code deals with insurance with unauthorized insurers. Subsection (e) of Section 2 of that Act levies a tax on the gross premiums paid by any person, firm, association or corporation which purchases insurance covering risks within Texas from an insurer not licensed by the State of Texas in a manner other than through an insurance agent licensed under the laws of Texas.

Todd Shipyards Corporation, hereinafter called "Todd" and "Plaintiff", is a New York corporation duly licensed to do business in Texas, and since 1934 has owned certain real and personal properties located in Texas of a value exceeding \$900,000.00, and Todd has purchased certain insurance agreements covering Texas risks on the dates and for the premium payments set forth in Exhibit "A" from the Lloyds of London and Institute of London Underwriters, and copies of each of these policies are attached as Exhibit "B". Only transactions and agreements with Lloyds of London and the Institute of London Underwriters

are involved in this case and each of such insurers is domiciled in London, England.

Each of the policies attached and made the basis of this suit was contracted for, delivered and paid for in the City of New York and State of New York, the domicile of Todd Shipyards Corporation.

[fol. 62] As demanded by the State Board of Insurance of Texas (formerly Board of Insurance Commissioners) and in compliance with Subsection (e) of Section 2 of Article 21.38 of the Texas Insurance Code, Todd Shipyards Corporation has duly paid the unadmitted insurers tax levied on such premium payments under protest and has duly complied in all respects with the Texas Protest Statute, Article 7057b; the dates and amounts of the tax payments under protest are itemized on Exhibit "A".

Neither Lloyds of London nor the Institute of London Underwriters conducts any investigation of Texas claims in Texas, but the adjustment of losses, if, as and when occurring, are handled between Todd's agent in the New York office and the agent of Lloyds of London and the Institute of London Underwriters in New York City.

Neither Lloyds of London nor the Institute of London Underwriters has ever solicited Todd's insurance business or policies within the State of Texas.

The Texas plants or offices of Todd Shipyards Corporation do not correspond directly or indirectly nor conduct any negotiations or transactions directly or indirectly with Lloyds of London or the Institute of London Underwriters but all negotiations or transactions are handled by Todd's agent, Mr. Ed Costello, in New York City with the New York City Agents of the insurer or directly with the London office.

All decisions relative to the purchase of insurance and renewal of insurance, the extent and amount of coverage, the selection of insurers and confirmation of insurance contracts are made by Mr. Ed Costello in New York City acting for Todd Shipyards Corporation, and not in Texas.

Under these policies all losses are payable in New York City and all losses have in fact been paid in New York City. All premiums are payable in New York City and have been paid in New York City.

[fol. 63] The tax levied by the State on premiums paid by Todd Shipyards Corporation on policies purchased from Lloyds of London and the Institute of London Underwriters, "unadmitted insurers", is at the rate of five per cent (5%) of the gross premiums. The tax on similar premiums paid to admitted insurers and persons transacting an insurance business in the State of Texas is at rates of a maximum of 3.85% to a minimum of 1.1% (Article 21.38, Texas Insurance Code and Article 7064 of Texas Revised Civil Statutes).

Todd Shipyards has its principal office, principal place of business and domicile in New York City, New York. Todd maintains and operates shipyards in New Jersey, Louisiana, Texas, California, Washington and South America.

Todd's Texas plants are located at Pelican Island in Galveston County, Texas, and on the Houston Ship Channel in Harris County, Texas. Todd duly obtained a certificate of authority to do business in Texas issued by the Secretary of State of Texas in 1934 and has maintained such certificate in good standing to this date, and has duly filed all reports and paid all taxes, fees and charges levied against Todd for the privilege of doing business as a foreign corporation in Texas for the purposes of this case, but without prejudice to any claim the State may have or later assert.

Since 1934 the Plaintiff, Todd Shipyards Corporation, has made large investments in real and personal properties essential to the conduct of its shipyard business which it has held and operated continuously since 1934.

Approximately 27% of the Plaintiff's volume of business was done in Texas in each of the years 1956, 1957, 1958 and 1959. The number of employees at the Texas plants varies with the amount of work, but in November, 1959, the number of employees was about 1500.

The principal type of activity performed at the Texas plants is similar to that in other plants located in other [fol. 64] states, and the Galveston and Houston, Texas shipyards activity consists mainly of ship repair and conversion of ships from one type to another, construction of

vessels, various types of metal fabrication and construction, as well as the manufacture of industrial equipment and oil burners.

For protection of the Plaintiff's property located in Texas and for protection against risks arising out of the use of Plaintiff's property, the Plaintiff purchases several types of insurance agreements including:

- (1) Industrial work property damage insurance
- (2) Builders' risk insurance
- (3) Dry dock insurance
- (4) Pier and bulkhead collision insurance
- (5) Product liability insurance, to the extent of the excess portion of that insurance.

The Plaintiff purchases the above enumerated types of insurance agreements and the insurance coverage set forth in the attached policies from Lloyds of London and the Institute of London Underwriters.

Lloyds of London does not have a permit from the Texas State Board of Insurance to write insurance in Texas, nor does it submit any statements of its condition to the Texas State Board of Insurance, nor are the affairs of Lloyds in any way subject to examination by the Texas State Board of Insurance, nor does the State Board of Insurance have any control or supervision over its affairs. The Institute of London Underwriters does not have a permit from the Texas State Board of Insurance to write insurance in Texas, nor does it submit any statements of its condition to the Texas State Board of Insurance, nor are the affairs of the Institute of London Underwriters in any way subject to an examination by the Texas State Board of Insurance, nor does the Texas State Board of Insurance have any control or supervision over its affairs.

[fol. 65] Neither Lloyds of London nor the Institute of London Underwriters has an office or agent in the State of Texas. At any time material to this law suit, neither Lloyds of London nor the Institute of London Underwriters had an office or agent in the State of Texas.

The Plaintiff has purchased the types of coverages provided for in the attached policies on its Texas properties since 1934. The policies of insurance of the types enumerated above and attached hereto are purchased for the Plaintiff from Lloyds of London and the Institute of London Underwriters by the following insurance brokerage companies: (1) Johnson & Higgins of New York City, New York, (2) Griswold Company of New York City, New York, (3) Marsh & McLennan, Inc., of New York City, New York, and (4) Hogg, Robinson and Kapell-Cure (Canada), Ltd., of Toronto, Canada. None of such brokers is an insurance agent licensed under the laws of the State of Texas. The attached policies of insurance are signed and issued by Lloyds of London and the Institute of London Underwriters in London, England, and it is stated in the policies that the place of physical and actual issue and delivery of the policy is London, England, but as between the insured and insurer, the place of issue may be considered New York City, New York, at the option of the insured under the agreement. The attached policies were accepted by Todd Shipyards Corporation in New York City in the State of New York.

These insurance policies are issued for one year terms except in the case of the builders' risk insurance. Such policies are renewed from year to year by the payment of additional premiums in New York to New York agents of the insurers. The renewal is negotiated and agreed upon between the New York broker and the Plaintiff's New York agent, Ed Costello, in New York City, New York, sometime before the expiration of the particular policy of insurance when the broker that sold such policy to the Plaintiff inquires of the Plaintiff's New York office [fol. 66] whether or not it wishes to continue its coverage with Lloyds or the Institute of London Underwriters. The Plaintiff's New York office then notifies the New York broker in New York of its decision to continue or discontinue its coverage with Lloyds and the Institute of London Underwriters and then the Broker notifies Lloyds and the Institute of London Underwriters. Then, the New York office of the Plaintiff notifies the Plaintiff's Texas plants that the insurance agreement has been renewed.

The premiums on each of the insurance policies are paid by and mailed from the Plaintiff's New York office to the New York office of the Broker. No premium is paid by or from the Texas plants or offices.

The New York office sends the Texas plant copies of the policies insuring such Texas Plant's risks.

In the case of builder's risk insurance, the Texas office of the plaintiff notifies Mr. Ed Costello in New York, the Plaintiff's New York insurance man, that Todd has entered into a construction or repair contract. Mr. Costello then applies to one of the New York insurance brokers for builder's risk insurance coverage on that particular vessel or contract; this application letter is signed by Mr. Costello in New York, an officer of the New York office, but the coverage is requested in the name of the Corporation's Texas division and identifies Texas as the place where the work is to be performed.

When a loss occurs at the Texas plants of the Plaintiff, the Texas plant informs Mr. Costello at the Plaintiff's New York office by telephone or memorandum. Mr. Costello in New York then notifies in New York the New York brokerage house in New York that negotiated the insurance; the New York broker in turn appoints the London Salvage Association to prepare an estimate or "survey" of the loss. A copy of a typical survey is hereto attached as Exhibit "C". In some instances, the Plaintiff's New York office notifies the London Salvage Association that a survey is requested. The Texas plant of the Plaintiff also [fol. 67] appraises the amount of Plaintiff's loss. After appraisal, the London Salvage Association forwards its estimate or survey to the Plaintiff's New York office, and Plaintiff then submits the survey to the particular insurance broker to be used in adjusting the amount of the loss. The local plant of the Plaintiff assists the London Salvage Association in arriving at a fair figure for the loss. The London Salvage Association issues a bill to Todd Shipyards for the London Salvage Association's services, and such bill is paid in New York City by Todd Shipyards Corporation.

The adjusting of the loss is carried on by Lloyds through the insurance broker in New York and Mr. Costello in

New York. The insurance broker submits its adjustment figure and recommendation to Lloyds in London and the Institute of London Underwriters for final approval. After the figure and adjustment of loss is approved, the New York office is notified by the insurance broker or the underwriter and the New York office then notifies the Texas plants that the claim will or will not be paid.


However, each party reserves the right to introduce other evidence at the time of the trial so long as such evidence is not offered to contradict any of the agreed recitations.

Will Wilson, Attorney General of Texas, Fred B. Werkenthin, Assistant Attorney General, Bob E. Shannon, Assistant Attorney General, Attorneys for Defendant, Capitol Station, Austin 11, Texas.

[fol. 68] Liddell, Austin, Dawson & Huggins, By Charles R. Vickery, Jr., By Meyer W. Witt, Attorneys for Todd Shipyards Corporation, 510 Gulf Building, Houston 2, Texas.

[fol. 71]

EXHIBIT "A" TO STIPULATION OF FACTS

(See opposite) 

**TODD SHIPYARDS CORPORATION
(GALVESTON DIVISION)
SCHEDULE OF TAX, PENALTY AND INTEREST
UNADMITTED INSURANCE
DECEMBER 17, 1959**


<u>Type of Insurance</u>	<u>Covered by Policy</u>	<u>Date Premium Paid</u>	<u>Premiums Involved</u>	<u>Tax</u>
Dry Dock Ins. (Incl. Strikes, etc.) Todd Owned	Lloyd's London #542/H.D. 9330			
D.D. #1 & #2	Institute of London Underwriters do	7-24-57	32,800.94	1,640.00
do	do do	7- 3-58	32,800.94	1,640.00
do	do do	7- 9-59	32,800.94	1,640.00
			<u>98,402.82</u>	<u>4,920.00</u>
Dry Dock Ins. (Incl. Strikes, etc.) Navy Owned				
D.D. AFDM-1	do #542/H.D. 3193	9-18-57	19,500.47	975.00
do	do do	9-29-58	19,500.47	975.00
do	do do	9-21-59	18,750.00	937.50
			<u>57,750.94</u>	<u>2,887.50</u>
Plant and/or Piers - Collision, Flood, Subsidence and Collapse Ins.	do #509/59/BI 468/JY	6-28-57	9,900.00	495.00
Plant and/or Piers - Collision, Flood, Subsidence and Collapse Ins. - Reinstatement of Loss 5/20/57	do do	6-27-58	76.63	3.82
Plant and/or Piers - Collision, Flood, Subsidence and Collapse Ins. - Reinstatement of Loss 9/20/57	do do	7-11-58	5.43	.26
Plant and/or Piers - Collision, Flood, Subsidence and Collapse Ins. - Collision, etc.	do do	7-11-58	10,968.75	548.44
Plant and/or Piers - Collision, Flood, Subsidence and Collapse Ins. - Reinstatement of Loss 1/16/57	do do	4- 4-58	12.63	.62
Plant and/or Piers - Collision, Flood, Subsidence and Collapse Ins. - Reinstatement of Loss 11/2/55	do do	4- 4-58	53.79	2.68
Plant and/or Piers - Collision, Flood, Subsidence and Collapse Ins. - Collision, etc.	do do	8-27-59	9,084.00	454.20
			<u>30,101.23</u>	<u>1,505.02</u>
Industrial Work Property Damage Ins.	Lloyd's London			
do	Institute of London Underwriters #576/89514	12- 2-57	9.32	.47
do	do do	11- 3-58	100.00	5.00
do	do do	3-19-58	100.00	5.00
do	do do	12- -59	125.00	6.25
do	do do	5-11-59	10.69	.53
			<u>345.01</u>	<u>17.25</u>
Products Liability - Bodily Injury & Property Damage	Lloyd's London (#542/59/137084)			
	Institute of London Underwriters (#542/59/137085)	1-31-58	187.58	9.38
Bull & Mach. Incl. P&I Port Risk - Potrero del Llano	Lloyd's London #576/86410			
do	Institute of London Underwriters do	10- 4-57	322.74	16.13
do	- Gen. Lazaro Cardenas do #576/87974	4-18-58	906.25	45.31
do	- Vera Cruz do #576/86411	10- 4-57	242.10	12.10
do	- Gen. Lazaro Cardenas do #576/87974	6-27-58	35.00	1.75
do	- Atzacapotzalco do #576/89399	9-26-58	200.00	10.00
do	- Asteca do #576/91100	5- 1-59	322.58	16.13
			<u>2,028.67</u>	<u>101.42</u>
			<u>\$188,816.25</u>	<u>\$9,440.57</u>
				<u>\$1,</u>

TODD SHIPYARDS CORPORATION
(GALVESTON DIVISION)
SCHEDULE OF TAX, PENALTY AND INTEREST
UNADMITTED INSURANCE
DECEMBER 17, 1959

	Date Premium Paid	Premiums Involved	Tax	Penalty	Interest	Total	Date Tax Paid
#542/M.D. 9330							
ra do	7-24-57	32,800.94	1,640.00	410.00	120.98	2,170.98	9-16-58
do	7-3-58	32,800.94	1,640.00	410.00	5.05	2,055.05	9-16-58
do	7-9-59	<u>32,800.94</u>	<u>1,640.00</u>	<u>-</u>	<u>-</u>	<u>1,640.00</u>	8-20-59
		<u>98,402.82</u>	<u>4,920.00</u>	<u>820.00</u>	<u>126.03</u>	<u>5,866.03</u>	
#542/H.D. 3193							
do	9-18-57	19,500.47	975.00	243.75	60.70	1,279.45	9-16-58
do	9-29-58	19,500.47	975.00	-	-	975.00	10-1-58
do	9-21-59	<u>18,750.00</u>	<u>937.50</u>	<u>-</u>	<u>-</u>	<u>937.50</u>	10-16-59
		<u>57,750.94</u>	<u>2,887.50</u>	<u>243.75</u>	<u>60.70</u>	<u>3,191.95</u>	
509/59/Bil 468/JY							
do	6-28-57	9,900.00	495.00	123.75	39.16	657.91	9-16-58
do	6-27-58	76.63	3.83	.96	.02	4.80	9-16-58
do	7-11-58	5.43	.26	.07	-	.33	9-16-58
do	7-11-58	10,968.75	548.44	137.11	.79	686.34	9-16-58
do	7-4-58	12.63	.62	.16	.01	.79	9-16-58
do	4-4-58	53.79	2.68	.67	.06	3.41	9-16-58
do	8-27-59	<u>9,084.00</u>	<u>454.20</u>	<u>-</u>	<u>-</u>	<u>454.20</u>	10-16-59
		<u>30,101.23</u>	<u>1,505.02</u>	<u>262.72</u>	<u>40.04</u>	<u>1,807.78</u>	
ra #576/89514							
do	12-2-57	9.32	.47	.12	.02	.61	9-16-58
do	11-3-58	100.00	5.00	1.25	.38	6.63	12-17-59
do	3-19-58	100.00	5.00	1.25	.12	6.37	9-16-58
do	12-5-59	125.00	6.25	-	-	6.25	12-17-59
do	5-11-59	<u>10.69</u>	<u>.53</u>	<u>.13</u>	<u>-</u>	<u>.66</u>	8-20-59
		<u>345.01</u>	<u>17.25</u>	<u>2.75</u>	<u>.52</u>	<u>20.52</u>	
(#542/59/137084							
ra (#542/59/137085	1-31-58	<u>187.58</u>	<u>9.38</u>	<u>2.35</u>	<u>.32</u>	<u>12.05</u>	9-16-58
#576/86410							
ra do	10-4-57	322.74	16.13	4.03	.95	21.11	9-16-58
#576/87974	4-18-58	906.25	45.31	11.33	.85	57.49	9-16-58
#576/86411	10-4-57	242.10	12.10	3.03	.72	15.85	9-16-58
#576/87974	6-27-58	35.00	1.75	.44	.01	2.20	9-16-58
#576/89399	9-26-58	200.00	10.00	-	-	10.00	10-1-58
#576/91100	5-1-59	<u>322.58</u>	<u>16.13</u>	<u>4.03</u>	<u>.17</u>	<u>20.33</u>	8-20-59
		<u>2,028.67</u>	<u>101.42</u>	<u>22.86</u>	<u>2.70</u>	<u>126.98</u>	
		<u>\$188,816.25</u>	<u>\$9,440.57</u>	<u>\$1,354.43</u>	<u>\$230.31</u>	<u>\$11,025.31</u>	

EXHIBIT "B" TO STIPULATION OF FACTS-1a

(Page 1)

(See opposite) 

52504 * - 6 JUL 1956

No Policy or Contract dated on or after 1st Jan. 1956 will be recognised by the Committee of Lloyd's as entitling the holder to the benefit of the Funds and/or Guarantees lodged by the Underwriters of the Policy or Contract as security for their liabilities unless it bears at foot the Seal of Lloyd's Policy Signers.

(No.



Any person not an Underwriting Member of Lloyd's subscribing this Policy, or any person uttering the same if so subscribed, will be liable to be proceeded against under Lloyd's Acts.

S.G.

B \$869.815 part of 10% of Total Valuation as attached.

Printed at Lloyd's, London, England.

20-10-55

Be it known that AS PER SCHEDULE ATTACHED,

as well in their own Name, as for and in the Name and Names of all and every other Person or Persons to whom the same doth, may, or shall appertain, in part or in all, doth make Assurance, and cause themselves and them and every of them, to be insured, lost or not lost, at and from

and for and during the space of TWELVE CALENDAR MONTHS
Commencing Noon 6th June 1956
and ending Noon 6th June 1957
beginning and ending with New York Standard Time.

upon any kind of Goods and Merchandises, and also the Body, Tackle, Apparel, Ordnance, Munition, Artillery, Boat and other Furniture, of and in the good Ship or Vessel called the *WILLIAM LLOYD* as per schedule attached hereto and forming part of this policy.

whereof is Master, under God, for this present Voyage, or whosoever else shall go for Master in the said Ship, or by whatsoever other Name or Names the same Ship, or the Master thereof, is or shall be named or called, beginning the Adventure upon the said Goods and Merchandises from the loading thereof aboard the said Ship as above upon the said Ship, &c., as above and shall so continue and endure during her Abode there, upon the said Ship, &c.; and further, until the said Ship, with all her Ordnance, Tackle, Apparel, &c., and Goods and Merchandises whatsoever, shall be arrived at as above upon the said Ship, &c., until she hath moored at Anchor ~~Town of~~ *in* good Safety, and upon the Goods and Merchandises until the same be there discharged and safely landed; and it shall be lawful for the said Ship, &c., in this Voyage to proceed and sail to and touch and stay at any Ports or Places whatsoever and wheresoever for all purposes without Prejudice to this Insurance. The said Ship, &c., Goods and Merchandises, &c., for so much as concerns the Assured by Agreement between the Assured and Assurers in this Policy, are and shall be valued at CASH AND DRY L CASH as per schedule attached.

Valued as per schedule attached.

SUBJECT TO MY BOOK FORM AS ATTACHED.

Subject to the Service of Brit Clauses as attached.

Including Waiver of Navigation against United States Government as attached.

Including Towage Contracts Clause as attached.



2	2.025%	Dock No. 1 Caisson for Graving Dock No. 2	1 Unit	50,000.	"	
3	1.80%	Dry Dock No. 3	5 Sections	650,000.	"	\$130,000, less proportionate share of value of equipment ashore, if any.
4	1.80%	Dry Dock No. 4	6 Sections	1,000,000.	"	\$166,667, less proportionate share of value of equipment ashore, if any.
5	1.80%	Dry Dock No. 6	5 Sections	800,000.	"	\$160,000, less proportionate share of value of equipment ashore, if any.

**NEW YORK HARBOR
(Hoboken Division)**

6	1.80%	Dry Dock No. 1	1 Unit (Box Dock)	100,000.	"	
7	1.80%	Dry Dock No. 2	1 Unit (Box Dock)	100,000.	"	
8	1.80%	Dry Dock No. 3	1 Unit (Box Dock)	250,000.	"	
9	1.80%	Dry Dock No. 4	5 Sections	750,000.	"	\$150,000, less proportionate share of value of equipment ashore, if any.
10	1.80%	Dry Dock No. 5	1 Unit (Box Dock)	75,000.	"	
11	1.80%	Dry Dock No. 6	1 Unit (Box Dock)	125,000.	"	
12	1.80%	Dry Dock No. 7	1 Unit (Box Dock)	125,000.	"	
13	1.80%	Dry Dock No. 8	1 Unit (Box Dock)	60,000.	"	

**NEW ORLEANS, LA.
(New Orleans Division)**

14	1.80%	Dry Dock No. 1	6 Sections	1,000,000.	"	\$134,000. 1 from upstream end \$358,000. " " 2 " " " \$102,000. " " 3 " " " \$102,000. " " 4 " " " \$170,000. " " 5 " " " \$134,000. " " 6 " " " less proportionate share of value of equipment ashore, if any.
15	1.25%	Damaged Dry Dock Sec. (Formerly part of Dry Dock No. 1)	1 Section	100,000.	"	
16	2.025%	Dry Dock No. 8	5 Sections	500,000.	"	2 end Sections, \$115,000. each, 3 in-between Sections, \$90,000. each, less proportionate share of value of equipment

as per schedule attached hereto and forming part of this policy.

98.10.53

whereof is Master, under God, for this present Voyage,
or whosoever else shall go for Master in the said Ship, or by whatsoever other Name or Names the same
Ship, or the Master thereof, is or shall be named or called, beginning the Adventure upon the said Goods
and Merchandises from the loading thereof aboard the said Ship *as above*
upon the said Ship, &c., *as above* and shall so continue and endure during
her Abode there, upon the said Ship, &c.; and further, until the said Ship, with all her Ordnance, Tackle,
Apparel, &c., and Goods and Merchandises whatsoever, shall be arrived at *as above*
upon the said Ship, &c., until she hath moored at Anchor ~~Townpoint of Havana~~ in good Safety, and upon the
Goods and Merchandises until the same be there discharged and safely landed; and it shall be lawful for the
said Ship, &c., in this Voyage to proceed and sail to and touch and stay at any Ports or Places whatsoever
and wheresoever for all purposes
without Prejudice to this Insurance. The said Ship, &c., Goods and Merchandises, &c., for so much as concerns
the Assured by Agreement between the Assured and Assurers in this Policy, are and shall be valued at
CASH AND LRY L CASH as per schedule attached.

Value per schedule letter

SUBJECT TO MY LUCK FOR AN ATTACHE.

Subject to the Service of Brit Clauses as attached.

Including Waiver of Abrogation against United States

Including Towage Contracts "large as attached.

Touching the Adventures and Perils which we the Assurers are contented to bear and do take upon us in this Voyage, they are, of the Seas, Men-of-War, Fire, Enemies, Pirates, Rovers, Thieves, Jettisons, Letters of Mart and Countermart, Surprisals, Takings at Sea, Arrests, Restraints and Detainments of all Kings, Princes and People, of what Nation, Condition, or Quality soever, Barratry of the Master and Mariners, and of all other Perils, Losses and Misfortunes that have or shall come to the Hurt, Detriment or Damage of the said Goods and Merchandises and Ship, &c., or any Part thereof; and in case of any Loss or Misfortune, it shall be lawful to the Assured, their Factors, Servants and Assigns, to sue, labour, and travel for, in and about the Defence, Safeguard and Recovery of the said Goods and Merchandises and Ship, &c., or any Part thereof, without Prejudice to this Insurance; to the Charges whereof we, the Assurers, will contribute, each one according to the Rate and Quantity of his Sum herein assured. And it is especially declared and agreed that no acts of the Insurer or Insured in recovering, saving, or preserving the property insured, shall be considered as a waiver or acceptance of abandonment. And it is agreed by us, the Insurers, that this Writing or Policy of Assurance shall be of as much Force and Effect as the surest Writing or Policy of Assurance heretofore made in Lombard Street, or in the Royal Exchange, or elsewhere in London.

Warranted free of capture, seizure, arrest, restraint or detention, and the consequences thereof or of any attempt to capture, seizure, arrest, restraint or detention, also from the consequences of hostilities or warlike operations, whether there be a declaration of war or not; but this warranty shall not exclude collision, contact with any fixed or floating object (other than a mine or torpedo), stranding, leaving another vessel or other object, caused directly (and independently of the nature of the voyage or service which the vessel concerned or, in the case of a collision, any other vessel involved therein, is performing) by a hostile act by or against a belligerent power; and for the purpose of this warranty the word "power" includes any authority maintaining naval, military or air forces in association with a power.

Further warranted free from the consequences of civil war, revolution, rebellion, insurrection, or civil strife arising therefrom or piracy.

And so we, the Assurers, are contented, and do hereby promise and bind ourselves, each one for his own Part, our Heirs, Executors, and Goods, to the Assured, their Executors, Administrators, and Assigns, for the true Performance of the Promises, confessing ourselves paid the Consideration due unto us for this Assurance by the Assured
at and after the Rate of rates as attached.

Touching the Adventures and Perils which we the Assurers are contented to bear and do take upon us in this Voyage, they are, of the Seas, Men-of-War, Fire, Enemies, Pirates, Rovers, Thieves, Jettisons, Letters of Mart and Countermart, Surprisals, Takings at Sea, Arrests, Restraints and Detainments of all Kings, Princes and People, of what Nation, Condition, or Quality soever, Barratry of the Master and Mariners, and of all other Perils, Losses and Misfortunes that have or shall come to the Hurt, Detriment or Damage of the said Goods and Merchandises and Ship, &c., or any Part thereof; and in case of any Loss or Misfortune, it shall be lawful to the Assured, their Factors, Servants and Assigns, to sue, labour, and travel for, in and about the Defence, Safeguard and Recovery of the said Goods and Merchandises and Ship, &c., or any Part thereof, without Prejudice to this Insurance; to the Charges whereof we, the Assurers, will contribute, each one according to the Rate and Quantity of his Sum herein assured. And it is especially declared and agreed that no acts of the Insurer or Insured in recovering, saving, or preserving the property insured, shall be considered as a waiver or acceptance of abandonment. And it is agreed by us, the Insurers, that this Writing or Policy of Assurance shall be of as much Force and Effect as the surest Writing or Policy of Assurance heretofore made in Lombard Street, or in the Royal Exchange, or elsewhere in London.

Warranted free of capture, seizure, arrest, restraint or detainment, and the consequences thereof or of any attempt at the same, also from the consequences of hostilities or warlike operations, whether there be a declaration of war or not; but this warranty shall not exclude collision, contact with any fired or floating object (other than a mine or torpedo), stranding, heaving down, or any other cause directly (and independently of the nature of the voyage or service which the vessel concerned or, in the case of a collision, any other vessel involved therein, is performing) by a hostile act by or against a belligerent power; and for the purpose of this warranty "power" includes any authority maintaining naval, military or air forces in association with a power.

Further warranted free from the consequences of civil war, revolution, rebellion, insurrection, or civil strife arising between or among powers or piracy.

And so we, the Assurers, are contented, and do hereby promise and bind ourselves, each one for his own Part, our Heirs, Executors, and Goods, to the Assured, their Executors, Administrators, and Assigns, for the true Performance of the Premises, confessing ourselves paid the Consideration due unto us for this Assurance by the Assured at and after the Rate of rates as attached.

IN WITNESS whereof we, the Assurers, have subscribed our Names and Sums assured in LONDON, at the City of London, as hereinafter appears.

N.B.—Corn, Fish, Salt, Fruit, Flour, and Seed are warranted free from Average, unless general, or the Ship be stranded; Sugar, Tobacco, Hemp, Flax, Hides, and Skins are warranted free from Average under Five Pounds per Cent.; and all other Goods, also the Ship and Freight, are warranted free from Average under Three Pounds per Cent., unless general, or the Ship be stranded.

How know ye, that We the Assurers, members of the Syndicate(s) whose definitive Number(s) in the attached list are set out in the Table overleaf, or attached overleaf, hereby bind Ourselves, each for his own part and not one for another, and in respect of his due proportion only, to pay or make good to the Assured all such Loss and/or Damage which he or they may sustain by any one or more of the aforesaid perils, and so that the due proportion for which each of Us the Assurers is liable shall be ascertained by reference to his proportion as ascertained according to the said List of the Amount, Percentage or Proportion of the total Sum assured which is in the said Table set opposite the definitive Number of the Syndicate of which such Assurer is a member.

IN WITNESS whereof the Manager of Lloyd's Policy Signing Office has subscribed his Name on behalf of each of Us.

LLOYD'S POLICY SIGNING OFFICE.

(12-11-39)
(12-6-40)

(10 76)

(In the event of accident whereby loss or damage will be much facilitated if immedi

MANAGER

settlement



6	1.80%	Dry Dock No. 1	1 Unit (Box Dock)	100,000.	"	
7	1.80%	Dry Dock No. 2	1 Unit (Box Dock)	100,000.	"	
8	1.80%	Dry Dock No. 3	1 Unit (Box Dock)	250,000.	"	
9	1.80%	Dry Dock No. 4	5 Sections	750,000.	"	\$150,000, less proportionate share of value of equipment ashore, if any.
10	1.80%	Dry Dock No. 5	1 Unit (Box Dock)	75,000.	"	
11	1.80%	Dry Dock No. 6	1 Unit (Box Dock)	125,000.	"	
12	1.80%	Dry Dock No. 7	1 Unit (Box Dock)	125,000.	"	
13	1.80%	Dry Dock No. 8	1 Unit (Box Dock)	60,000.	"	

NEW ORLEANS, LA.
(New Orleans Division)

14	1.80%	Dry Dock No. 1	6 Sections	1,000,000.	"	\$134,000. 1 from upstream end \$158,000. " " 2 " " " \$102,000. " " 3 " " " \$102,000. " " 4 " " " \$170,000. " " 5 " " " \$134,000. " " 6 " " " less proportionate share of value of equipment ashore, if any.
15	1.25%	Damaged Dry Dock Sec. (Formerly part of Dry Dock No. 1)	1 Section	100,000.	"	
16	2.25%	Dry Dock No. 8	5 Sections	500,000.	"	2 end Sections, \$115,000. each, 3 in-between Sections, \$90,000. each, less proportionate share of value of equipment ashore, if any.

GALVESTON, TEXAS
(Galveston Division)

17	1.00%	Dry Dock No. 1	2 Sections	800,000.	"	Large Section \$520,000, small Section \$280,000, less proportionate share of value of equipment ashore, if any.
18	1.00%	Dry Dock No. 2	2 Sections	800,000.	"	Large Section \$520,000, small Section \$280,000, less proportionate share of value of equipment ashore, if any.

HOUSTON, TEXAS
(Products Division)

each, 3 in-between Sections, \$30,000. each, less proportionate share of value of equipment ashore, if any.

GALVESTON, TEXAS
(Galveston Division)

17	1.00%	Dry Dock No. 1	2 Sections	800,000.	"	Large Section \$520,000, small Section \$280,000, less proportionate share of value of equipment ashore, if any.
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18	1.00%	Dry Dock No. 2	2 Sections	800,000.	"	Large Section \$520,000, small Section \$280,000, less proportionate share of value of equipment ashore, if any.
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HOUSTON, TEXAS
(Products Division)

19	1.00%	Dry Dock No. 2	6 Sections	1,500,000.	"	2 end Sections, \$270,000. each, 4 in-between Sections \$240,000. each, less proportionate share of value of equipment ashore, if any.
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20	1.00%	Damaged Dry Dock Sec. (Formerly part of Former Dry Dock No. 3)	1 Section	153,000.		
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1. Anything herein to the contrary notwithstanding this insurance is warranted free from all claims of whatsoever nature (including claims under the collision, sue and labor and strikes, riots, etc. clauses) other than Total Loss and/or Constructive Total Loss which shall be paid in full, unless the aggregate of such claims arising out of each separate accident exceeds \$2,500., in which case this insurance shall be liable only for the amount by which such aggregate exceeds \$2,500.; and a recovery from other interests and/or parties shall not operate to exclude a claim under this insurance, providing the aggregate of the claims (as before) unreduced by such recovery amounts to \$2,500. For the purpose of this insurance each accident shall be treated separately, but it is agreed that a sequence of damages arising directly or indirectly from the same peril shall be treated as one accident. It is understood that the \$2,500. Deductible shall be applied in full to each Dry Dock or Caisson and shall not be pro rated over each Section and property on shore pertaining thereto.

2. In respect of Dry Docks consisting of more than one Section:

The Equipment forming a part of the Floating Dry Docks and Caissons situated on shore and not on the Docks (consisting of switchboards, transformers, electrical equipment, panels and all other similar equipment) and each

EXHIBIT "B" TO STIPULATION OF FACTS—1a

(Page 2)

(See opposite) 

HOUSTON, TEXAS
(Products Division)

19	1.1.1.	Dry Dock No. 2	6 Sections	1,500,000.	"	2 end Sections, \$270,000. each, 4 in-between Sections \$240,000. each, less proportionate share of value of equipment ashore, if any.
20	1.1.1.	Damaged Dry Dock Sec. (Formerly part of Former Dry Dock No. 3)	1 Section	153,000.		

1. Anything herein to the contrary notwithstanding this insurance is warranted free from all claims of whatsoever nature (including claims under the collision, sue and labor and strikes, riots, etc. clauses) other than Total Loss and/or Constructive Total Loss which shall be paid in full, unless the aggregate of such claims arising out of each separate accident exceeds \$2,500., in which case this insurance shall be liable only for the amount by which such aggregate exceeds \$2,500.; and a recovery from other interests and/or parties shall not operate to exclude a claim under this insurance, providing the aggregate of the claims (as before) unreduced by such recovery amounts to \$2,500. For the purpose of this insurance each accident shall be treated separately, but it is agreed that a sequence of damages arising directly or indirectly from the same peril shall be treated as one accident. It is understood that the \$2,500. Deductible shall be applied in full to each Dry Dock or Calsson and shall not be pro rated over each Section and property on shore pertaining thereto.

2. In respect of Dry Docks consisting of more than one Section:

The Equipment forming a part of the Floating Dry Docks and Calssons situated on shore and not on the Docks (consisting of switchboards, transformers, electrical equipment, panels and all other similar equipment) and each Section of the Dry Docks shall be separately valued and separately insured for the amounts stated above.

In respect of Dry Docks and Calssons consisting of one Unit or Section:

It is understood and agreed that loss or damage to property on shore forming a part of the Dry Docks or Calssons shall not exceed 10% of the total value stated herein (Column 4) on each respective Dry Dock or Calsson and when so applying the same amount shall cease to cover on the floating Unit or Section.

Definitive Numbers of the Syndicates and Amount, Percentage or Proportion of the Total Amount insured shared between the Members of those Syndicates.

The percentages signed hereon are percentages of the full amount (i.e. \$10,000,000) and not of the policy amount.


PERCENT	SYNDICATE	UNDERWRITER'S REFERENCE
1.543	542	52504
1.203	542	52504
1.107	542	52504
1.107	542	52504
1.107	542	52504
.411	542	52504
3.280	542	52504
.328	542	52504
.443	542	52504
2.053	542	52504
2.053	542	52504
.411	542	52504
.606	542	52504
.450	542	52504
1.725	542	52504
.345	542	52504
.345	542	52504
0.027	542	52504
1.232	542	52504
1.786	542	52504
.267	542	52504
.486	542	52504
.246	542	52504
4.107	542	52504
.821	542	52504

PERCENT	SYNDICATE	UNDERWRITER'S REFERENCE
1.203	542	52504
1.027	542	52504
.821	542	52504
.210	542	52504
1.232	542	52504
.852	542	52504
.085	542	52504
.145	542	52504
1.027	542	52504
.821	542	52504
.821	542	52504
.616	542	52504
.411	542	52504
.205	542	52504
.411	542	52504
.411	542	52504
.616	542	52504
.210	542	52504
.205	542	52504
.103	542	52504
.411	542	52504

PERCENT	SYNDICATE	UNDERWRITER'S REFERENCE
.082	719	52504
.124	719	52504

EXHIBIT "E" TO STIPULATION OF FACTS—1a

(Page 4)

(See opposite) 

.411
 .606
 .460
 1.725
 .345
 .345
 0.027
 1.232
 1.786
 .267
 .486
 .246
 4.107
 .821

4123 5
 0843 5
 2634 5 55
 4504 5 55
 9024 5 55
 9994 5 55
 31657 P
 9957 5 55
 711H/T46 / 5 55
 713H/T46 / 5 55
 2747 5 55
 2707 5 55
 41856/PW 11
 7075 5 55

.821
 .616
 .411
 .205
 .411
 .411
 .616
 .616
 .205
 .103
 .411
 5217 5 55 00 1
 4777 5 55
 3097 5 55
 7427 5 55 10 00
 2647 5 55
 5547 5 55
 2877 5 55 1 10
 2227 5 55
 5257 5 55
 5127 5 55
 4737 5 55

AMOUNT PERCENTAGE ON PROPORTION

.082
 .184
 .739
 .404
 1.027
 .205
 .205
 1.027
 1.540
 .513
 .821
 1.232
 1.232
 .205
 .821
 .821
 1.027
 .205
 .822
 .205
 1.232
 .616
 .616
 .821
 1.027
 .821

PROPERTY NO. LP.S.O. SLIP NO. LP.S.O. DATE
 52504 6 7/56
 SYNDICATE UNDERWRITER'S AFFIDAVIT
 7195 5 55
 7245 5 55
 5327 5
 5337 5
 2135062 4 5
 2065062 4 5
 2035062 4 5
 897 5 T/17
 7644 5 55 P K
 3414 5 55 P K
 5907 5 55
 165RE NL
 10H7 5
 1017 5
 8684 5
 8557 5 DK 950
 43H7 5 55
 3547 5 55
 5357 5
 5367 5
 123
 247
 8177 5
 2168LG 1706
 4H3070 14
 220K75 5

RATES as per schedule attached.

Plus .5% Strikers etc. (Broad Form).

Nos. 15 and 20. To pay Additional Premium pro rata .775% from time locks are placed in actual operation.

RENEWALS each 15 days cancelling.

Rate:	<u>2.00% plus .05%</u>	<u>1.80% plus .05%</u>	<u>1.25% plus .05%</u>	<u>1.55% plus .05%</u>
Return:	7.003125% nett	6.24375% nett	4.3075% nett	5.40% nett.

To return 3.70075% nett Nos. 1, 2 and 10 and 3.0375% nett on other main circle locks for each consecutive 15 days unemployed - and arrival.

To return 3.20025% nett for each consecutive 15 days unemployed as far as concerns lock No. 2, Houston, - and arrival.

This insurance also covers damage to or destruction of the property insured directly caused by strikers, locked-out workmen or persons taking part in labor disturbances or riots or civil commotions or caused by vandalism, sabotage or malicious mischief but excluding civil war, revolution, rebellion or insurrection, or civil strife arising therefrom, and warranted free from any claim for delay, detention or loss of use.

Notwithstanding the exclusions in the above clause in the

EXHIBIT "B" TO STIPULATION OF FACTS—1a

(Page 3)

(See opposite) 

Rate each 15 days cancelling.

Rate:	<u>2.00 plus .05%</u>	<u>1.80 plus .05%</u>	<u>1.25 plus .05%</u>	<u>1.55 plus .05%</u>
Return:	7.003125¢ nett	6.24375¢ nett	4.3075¢ nett	5.40¢ nett.

To return 3.70075¢ nett Nos. 1, 2 and 10 and 3.0375¢ nett on other main circle locks for each consecutive 15 days unemployed - and arrival.

To return 3.20025¢ nett for each consecutive 15 days unemployed as far as concerns lock No. 2, Houston, - and arrival.

This insurance also covers damage to or destruction of the property insured directly caused by strikers, locked-out workmen or persons taking part in labor disturbances or riots or civil commotions or caused by vandalism, sabotage or malicious mischief, but excluding civil war, revolution, rebellion or insurrection, or civil strife arising therefrom, and warranted free from any claim for delay, detention or loss of use.

Notwithstanding the exclusions in the above clause in the within policy "vandalism", "sabotage" and "malicious mischief", as used herein, shall be construed to include wilful or malicious physical injury to or destruction of the described property caused by acts committed by an agent of any Government, party or faction engaged in war, hostilities or other warlike operations provided such agent is acting secretly and not in connection with any operations of military or naval armed forces in the country where the described property is situated.

ASSURED:

TODD SHIPYARDS CORPORATION and/or **TODD ATLANTIC SHIPYARDS CORPORATION** and/or **Affiliated and/or Associated Corporations and/or Companies** of any of the above, as their respective interests may appear.

Losses, if any, payable to **TODD SHIPYARDS CORPORATION**, or order.

The Sectional Floating Dry Docks and/or Caissons insured hereunder and the amounts insured thereon and the valuations thereof (each) for all purposes of this insurance are declared and agreed to be as below set forth, each to be considered as if separately insured.

(1)	(2)	(3)	(4)	DISTRIBUTION OF TOTAL VALUATION (4)	
ITEM	Rate	NUMBER OF SECTIONS OR UNITS	TOTAL VALUATION	VALUE OF DOCK EQUIP- MENT IF ANY OWNED BY ASSURED AND SITUATED ON SHORE SUCH AS SWITCHBOARDS, TRANS- FORMERS, ELECTRICAL EQUIPMENT, PANELS, ETC.	VALUE OF EACH FLOATING UNIT OR SECTION
NEW YORK HARBOR (Brooklyn Division)					
1	2.025%	Caisson for Graving Dock No. 1	1 Unit	\$ 150,000.	Not exceeding 10% of Total Valuation.
2	2.025%	Caisson for Graving Dock No. 2	1 Unit	50,000.	"
3	1.80%	Dry Dock No. 3	5 Sections	650,000.	" \$130,000, less proportion- ate share of value of equipment ashore, if any.
4	1.80%	Dry Dock No. 4	6 Sections	1,000,000.	" \$166,667, less proportion- ate share of value of equipment ashore, if any.
5	1.80%	Dry Dock No. 6	5 Sections	800,000.	" \$160,000, less proportion- ate share of value of equipment ashore, if any.
NEW YORK HARBOR (Hoboken Division)					
6	1.80%	Dry Dock No. 1	1 Unit (Box Dock)	100,000.	"
7	1.80%	Dry Dock No. 2	1 Unit (Box Dock)	100,000.	"
8	1.80%	Dry Dock No. 3	1 Unit (Box Dock)	250,000.	"
9	1.80%	Dry Dock No. 4	5 Sections	750,000.	" \$150,000, less proportion- ate share of value of equipment ashore, if any.
10	1.80%	Dry Dock No. 5	1 Unit (Box Dock)	75,000.	"

AS PER SCHEDULE ATTACHED

FOR ACCOUNT OF WHOM IT MAY CONCERN. LOSS, IF ANY, PAYABLE IN FUNDS CURRENT IN UNITED STATES OF AMERICA, TO

TODD SHIPYARD'S CORPORATION

OR ORDER

DO MAKE INSURANCE AND CAUSE TO BE INSURED

AT AND FROM THE 6th DAY OF June 19 56 AT NOON New York Standard TIME

UNTIL THE 6th DAY OF June 19 57 AT NOON New York Standard TIME

FOR as per schedule attached dollars (\$.....)

As employment may offer, in port or at sea, in docks and graving docks, and on ways, gridirons and pontoons, at all times, in all places and on all occasions, services and trades whatsoever and wheresoever, under power or sail, upon the Body, Tackle, Apparel, Machinery, Pumps, Equipment, Cradles, Power House, Hauling Machinery, Boilers, &c., Ordnance, Munitions, Stores, Artillery, Boat and other Furniture or equipment of whatever nature and everything connected therewith of and in the good

as per schedule attached.

or by whatsoever other name or names the said dock is or shall be named or called, beginning the adventure upon the said dock, &c., as above, and shall so continue and endure during the period as aforesaid. Should the above dock at the expiration of this policy be at sea, or in distress, or at a port of refuge or of call, she shall, provided previous notice be given to the Underwriters be held covered at a pro rata monthly premium to her port of destination, and it shall be lawful for the said dock, &c., to proceed and sail to and touch and stay at any Ports or Places whatsoever and wheresoever without prejudice to this insurance. The said dock, &c., for so much as concerns the Assured, by agreement between the Assured and Assurers in this policy, is and shall be valued for all purposes of this insurance at \$..... as per schedule attached

3 Privilege to use dry dock sections separately or collectively without prejudice to this insurance.

4 TOUCHING the adventures and perils which we, the said assurers, are contented to bear and take upon us, they are of the Seas, Rivers, Lakes, Harbors, Fire, Pirates, Rovers, Assaulting Thieves, Jettisons, Explosions, Riots, and all other perils, losses, and misfortunes of whatsoever nature arising either on shore or otherwise that have or shall come to the hurt, detriment, or damage of said dock, &c., or any part thereof. And in the case of any loss or misfortune it shall be lawful for the assured, their factors, servants and assigns, to sue, labor and travel for, in, and about the defense, safeguard and recovery of the said dock, &c., or any part thereof, without prejudice to this insurance; to the charges whereof the said insurance company will contribute according to the Rate and Quantity of the sum herein insured. And it is expressly declared and agreed that no acts of the insurer or insured in recovering, saving, or preserving the property insured shall be considered as a waiver or acceptance of abandonment. Having been paid the consideration for this insurance, by the

Assured or their assigns at and after the rate of as attached per cent.

5 TO RETURN as attached per cent net for every 15 days of unexpired time, if this insurance be cancelled, but there shall be no cancellation or return of premium in case of total loss of the property from any cause whatsoever.

To pay averages in full irrespective of percentage and repairs to be paid without deduction of new for old.

WITH LEAVE to sail with or without pilots, be towed, and to assist vessels and/or craft in all situations and to any extent to render salvage services, and to go on trial trips. Including risks of drydocking, undocking or changing docks or moving in harbours and going on and/or off slipway, gridiron or graving dock or pontoons as often as may be required and to adjust compasses.

General Average, Salvage and Special Charges payable as provided in the contract of affreightment, or failing such provisions, or there be no contract of affreightment, payable in accordance with the Laws and Usages of the Port of New York or San Francisco. Provided always that when an adjustment according to the laws and usages of the port of destination is properly demanded by the owners of the cargo, General Average shall be paid in accordance with same.

When the contributory value of the dock is greater than the valuation herein the liability of these Underwriters for General Average contribution (except in respect to amount made good to the dock) or Salvage shall not exceed that proportion of the total contribution due from the dock that the amount insured hereunder bears to the contributory value; and if because of damage for which these Underwriters are liable as Particular Average the value of the dock has been reduced for the purpose of contribution, the amount of the Particular Average claim under this Policy shall be deducted from the amount insured hereunder and these Underwriters shall be liable only for the proportion which such net amount bears to the contributory value.

Assured or their assigns at and after the rate of as attached per cent.

8 **TO RETURN** as attached per cent not for every 15 days of unexpired time, if this insurance be cancelled, but there shall be no cancellation or return of premium in case of total loss of the property from any cause whatsoever.

To pay averages in full irrespective of percentage and repairs to be paid without deduction of new for old.

WITH LEAVE to sail with or without pilots, be towed, and to assist vessels and/or craft in all situations and to any extent to render salvage services, and to go on trial trips. Including risks of drydocking, undocking or changing docks or moving in harbours and going on and/or off slipway, gridiron or graving dock or pontoons as often as may be required and to adjust compasses.

General Average, Salvage and Special Charges payable as provided in the contract of affreightment, or failing such provisions, or there be no contract of affreightment, payable in accordance with the Laws and Usages of the Port of New York or San Francisco. Provided always that when an adjustment according to the laws and usages of the port of destination is properly demanded by the owners of the cargo, General Average shall be paid in accordance with same.

When the contributory value of the dock is greater than the valuation herein the liability of these Underwriters for General Average contribution (except in respect to amount made good to the dock) or Salvage shall not exceed that proportion of the total contribution due from the dock that the amount insured hereunder bears to the contributory value; and if because of damage for which these Underwriters are liable as Particular Average the value of the dock has been reduced for the purpose of contribution, the amount of the Particular Average claim under this Policy shall be deducted from the amount insured hereunder and these Underwriters shall be liable only for the proportion which such net amount bears to the contributory value.

This insurance also specially to cover cost of repairs, and/or loss of or damage to the property hereby insured, directly caused by accidents in loading, discharging or handling cargo or by any object whatsoever coming in contact therewith, or caused through negligence and/or error of judgment of Master, Mariners, Engineers, or other servants or employees of the Owners and/or Charterers and/or Operators and/or Lessees. Pilots, Servants, or Employees of Port, Harbour or Dock Authorities, Stevedores, Labourers, Tradesmen or other Persons in, on or about the Dock, or through contact with aircraft, or objects dropping therefrom, or through explosions, howsoever or wheresoever occurring, bursting of boilers, breakage of machinery or shafts, or through any latent defect in the Machinery or Hull (excluding, however, the cost and expense of repairing or renewing the defective part), causing loss or injury to the property hereby insured, provided such loss or damage has not resulted from want of due diligence by the owners of the dock, or any of them, or by the Manager, and to cover all risks incidental to Navigation, or in graving docks, Master, Mates, Engineers, Pilots, or crew not to be considered as part owners within the meaning of this clause should they hold shares in the property. Seaworthiness admitted.

~~THIS POLICY ALSO COVERS ALL LOSS AND/OR DAMAGE AND/OR EXPENSE CAUSED TO THE DOCK HEREBY INSURED BY ANY VESSEL AND/OR CRAFT AND/OR STRUCTURE ENTERING AND/OR IN AND/OR LEAVING THE DOCK.~~

11 Including loss or damage directly or indirectly caused by earthquake, volcanic eruption, or tidal waves.

12 This policy also covers all loss and/or damage and/or expense caused to the dock hereby insured by any vessel and/or craft and/or structure entering and/or in and/or leaving the dock.

14 **IN THE EVENT** of this policy beginning or ending while the dock is in course of a voyage, underwriters agree to pay their proportion of loss or damage sustained while the policy is in force, provided the loss or damage sustained on the entire voyage would have been recoverable, if this policy had covered such voyage in its entirety.

15 **No recovery** for a Constructive Total Loss shall be had hereunder, unless the expense of recovering and repairing the dock shall exceed the insured value.

16 **IN ASCERTAINING** whether the dock is a constructive total loss the insured value shall be taken as the repaired value, and nothing in respect of the damaged or break-up value of the dock or wreck shall be taken into account.

17 **IN NO CASE** shall the insurers be liable for unrepaired damage in addition to a subsequent total loss sustained during the term covered by this policy.

18 **IT IS AGREED** that any change of interest in the property hereby insured, shall not affect the validity of this policy.

19 **HELD COVERED** in case of any breach of warranty as to trade, locality or description provided notice be given, and any additional premium required be agreed as soon as practicable after receipt of advices.

20 **Warranted free of liability** for damage done to vessels, craft and/or structures or their cargoes or their freight whilst going on, whilst on and/or whilst going off the dock insured hereunder.

21 It is agreed to substitute the words "Marine Railway" for the word "Dock", where or whenever required.

FULL COLLISION AND SISTER SHIP COLLISION CLAUSE

22 And it is further agreed that if the Dock hereby insured shall come into collision with any Ship or Vessel and the Assured or the Charterers or Operators or Lessees in consequence thereof or the Surety for any or all of them in consequence of their undertaking shall become liable to pay and shall pay by way of damages to any other person or persons any sum or sums in respect of such collision, we, the Underwriters, will pay the Assured or Charterers or Operators or Lessees such proportion of such sum or sums so paid as our respective subscriptions hereto bear to the value of the Dock hereby insured, provided always that our liability in respect of any one such collision shall not exceed our proportionate part of the value of the Dock hereby insured. And in cases where the liability of the Dock has been contested, or proceedings have been taken to limit liability, with the consent in writing of a majority (in amount) of the Underwriters on the dock, etc., we will also pay a like proportion of the costs which the Assured or Charterers or Operators or Lessees shall thereby incur, or be compelled to pay; but when both Dock and Vessel are to blame, then, unless the liability of the Owners or Charterers or Operators or Lessees of one or both of such Dock and Vessel become limited by law, claims under the Collision Clause shall be settled on the principle of Cross Liabilities as if the Owners or Charterers or Operators or Lessees of each had been compelled to pay to the Owners or Charterers or Operators or Lessees of the other such one-half or other proportion of the latter's damages as may have been properly allowed in ascertaining the balance or sum payable by or to Assured or Charterers or Operators or Lessees in consequence of such collision; and it is further agreed that the principles involved in this clause shall apply to the case where both Dock and Vessel are the property, in part or in whole, of the same Owners or Charterers or Operators or Lessees, all questions of responsibility and amount of liability as between the two being left to the decision of a single Arbitrator, if the parties can agree upon a single Arbitrator, or failing such agreement, to the decision of Arbitrators, one to be appointed by the Managing Owners or Charterers or Operators or Lessees of both and one to be appointed by the majority (in amount) of Underwriters interested; the two Arbitrators chosen to choose a third Arbitrator before entering upon the reference, and the decision of such single, or of any two of such three Arbitrators, appointed as above to be final and binding. **PROVIDED ALWAYS THAT THIS CLAUSE SHALL ALSO EXTEND** to any sum which the Assured or Charterers or Operators or Lessees may become liable to pay or shall pay for removal of obstructions under statutory powers, for injury to harbours, wharves, piers, stages and similar structures, consequent on such collision, or in respect of the Insured Dock **BUT EXCLUDING LIABILITY FOR LOSS OF LIFE OR PERSONAL INJURY**.

61 It is agreed to substitute the words "Marine Railway" for the word "Dock", where or whenever required.

FULL COLLISION AND SISTER SHIP COLLISION CLAUSE

62 And it is further agreed that if the Dock hereby insured shall come into collision with any Ship or Vessel and the Assured or the Charterers or Operators or Lessees in consequence thereof or the Surety for any or all of them in consequence of their undertaking shall become liable to pay and shall pay by way of damages to any other person or persons any sum or sums in respect of such collision, we, the Underwriters, will pay the Assured or Charterers or Operators or Lessees such proportion of such sum or sums so paid as our respective subscriptions hereto bear to the value of the Dock hereby insured, provided always that our liability in respect of any one such collision shall not exceed our proportionate part of the value of the Dock hereby insured. And in cases where the liability of the Dock has been contested, or proceedings have been taken to limit liability, with the consent in writing of a majority (in amount) of the Underwriters on the dock, etc., we will also pay a like proportion of the costs which the Assured or Charterers or Operators or Lessees shall thereby incur, or be compelled to pay; but when both Dock and Vessel are to blame, then, unless the liability of the Owners or Charterers or Operators or Lessees of one or both of such Dock and Vessel become limited by law, claims under the Collision Clause shall be settled on the principle of Cross Liabilities as if the Owners or Charterers or Operators or Lessees of each had been compelled to pay to the Owners or Charterers or Operators or Lessees of the other such one-half or other proportion of the latter's damages as may have been properly allowed in ascertaining the balance or sum payable by or to Assured or Charterers or Operators or Lessees in consequence of such collision; and it is further agreed that the principles involved in this clause shall apply to the case where both Dock and Vessel are the property, in part or in whole, of the same Owners or Charterers or Operators or Lessees, all questions of responsibility and amount of liability as between the two being left to the decision of a single Arbitrator, if the parties can agree upon a single Arbitrator, or failing such agreement, to the decision of Arbitrators, one to be appointed by the Managing Owners or Charterers or Operators or Lessees of both and one to be appointed by the majority (in amount) of Underwriters interested; the two Arbitrators chosen to choose a third Arbitrator before entering upon the reference, and the decision of such single, or of any two of such three Arbitrators, appointed as above to be final and binding. PROVIDED ALWAYS THAT THIS CLAUSE SHALL ALSO EXTEND to any sum which the Assured or Charterers or Operators or Lessees may become liable to pay or shall pay for removal of obstructions under statutory powers, for injury to harbors, wharves, piers, stages and similar structures, consequent on such collision, or in respect of the Insured Dock BUT EXCLUDING LIABILITY FOR LOSS OF LIFE OR PERSONAL INJURY.

63 And it is further agreed that in the event of salvage, towage or other assistance being rendered to the Dock hereby insured by any Vessel belonging in part or in whole to the same Owners or Charterers or Operators or Lessees, the value of such services (without regard to the common ownership or control of the Vessel) shall be ascertained by arbitration in the manner above provided for under the Collision Clause, and the amount so awarded so far as applicable to the interest hereby insured shall constitute a charge under this Policy.

PROTECTION AND INDEMNITY CLAUSE

64 AND WE FURTHER AGREE that if the Assured and/or charterers and/or operators and/or lessees shall become liable to pay and shall pay any sum or sums in respect of any responsibility, claim, demand, damages, and/or expenses or shall incur any other loss arising from or occasioned by any of the following matters or things during the currency of this policy in respect of the dock hereby insured, that is to say:

65 Loss or damage in respect of any other ship or boat or in respect of any goods, merchandise, freight or other things or interests whatsoever on board such other ship or boat, caused proximately or otherwise by the dock insured in so far as the same is not covered by the Collision Clause herein set forth.

66 Loss or damage to any goods, merchandise, freight or other things or interests whatsoever, other than as aforesaid, whether on board the said dock or not which may arise from any cause whatever.

67 Loss or damage to any harbor, dock, graving or otherwise, slipway, way, gridiron, pontoon, pier, quay, jetty, stage, buoy, telegraph cable, or other fixed or movable thing whatsoever or to any goods or property in or on or about the same, howsoever caused.

68 Any attempted or actual raising, removal or destruction of the wreck of the said dock or the cargo thereof, or any neglect or failure to raise, remove or destroy the same.

69 Any sum or sums for which the Assured and/or charterers and/or operators and/or lessees may become liable or incur from causes not hereinbefore specified, but which are or have heretofore been absolutely or conditionally recoverable from or undertaken by British Protection and Indemnity Clubs, but excluding loss of life or personal injury.

70 We will pay the Assured and/or charterers and/or operators and/or lessees such proportion of such sum or sums so paid, or which may be required to indemnify the Assured and/or charterers and/or operators and/or lessees for such loss as our respective subscriptions bear to the policy value of the dock hereby insured, and in case the liability of the Assured and/or charterers and/or operators and/or lessees has been contested, with the consent in writing of a majority of the Underwriters on the dock hereby insured (in amount), we will also pay a like proportion of the costs which the Assured and/or charterers and/or operators and/or lessees shall thereby incur or be compelled to pay.

71 This insurance also to pay the expenses, after deduction of the proceeds of the salvage, not recoverable under Clause 28, of the removal of the wreck of the insured dock from any place owned, leased or occupied by the Assured. Underwriters' Liability under this clause is subject to the limitations in amount provided in Clause 30. The provisions of that clause regarding the payment of costs shall apply also hereto.

72 It is further agreed that in all cases of common ownership of dock or other property the matter shall be dealt with in accordance with the principles laid down in the sistership clauses incorporated in the collision clause.

FREE OF CAPTURE AND SEIZURE CLAUSE (WAR RISK EXCLUSION)

73 Unless physically deleted by the Underwriters, the following warranty shall be paramount and shall supersede and nullify any contrary provision of the Policy:

Notwithstanding anything to the contrary contained in the Policy, this insurance is warranted free from any claim for loss, damage or expense caused by or resulting from capture, seizure, arrest, restraint or detention or the consequences thereof or of any attempt thereof, or any taking of the Dock, by regulation or otherwise, whether in time of peace or war and whether lawful or otherwise; also from all consequences of hostilities or warlike operations (whether there be a declaration of war or not), but this warranty shall not exclude collision, contact with any fixed or floating object (other than a mine or torpedo), stranding, heavy weather or fire or explosion unless caused directly (and independently of the nature of the voyage or service which the vessel concerned or, in the case of a collision, any other vessel involved therein, is performing) by a hostile act by or against a belligerent power; and for the purpose of this warranty "power" includes any authority maintaining naval, military or air forces in association with a power.

Further warranted free from the consequences of civil war, revolution, rebellion, insurrection, or civil strife arising therefrom, or piracy. If war risks are hereafter insured by endorsement on the Policy, such endorsement shall supersede the above warranty only to the extent that their terms are inconsistent and only while such war risk endorsement remains in force.

NON PAYMENT OF PREMIUM CLAUSE (applicable to insurance placed in London or outside U. S. A.)

74 The Assured shall be directly liable to the Assurer for all premiums under this policy. If payment of premium is not made by the Assured within 10 days after attachment of the insurance or, in the event the Assurer shall have agreed to accept deferred payments, if any payment of premium is

sum or sums in respect of any responsibility, claim, demand, damages, and/or expenses or shall incur any other loss arising from or occasioned by any of the following matters or things during the currency of this policy in respect of the dock hereby insured, that is to say:

Loss or damage in respect of any other ship or boat or in respect of any goods, merchandise, freight or other things or interests whatsoever on board such other ship or boat, caused proximately or otherwise by the dock insured in so far as the same is not covered by the Collision Clause herein set forth.

Loss or damage to any goods, merchandise, freight or other things or interests whatsoever, other than as aforesaid, whether on board the said dock or not which may arise from any cause whatever.

Loss or damage to any harbor, dock, graving or otherwise, slipway, way, gridiron, pontoon, pier, quay, jetty, stage, buoy, telegraph cable, or other fixed or movable thing whatsoever or to any goods or property in or on or about the same, however caused.

Any attempted or actual raising, removal or destruction of the wreck of the said dock or the cargo thereof, or any neglect or failure to raise, remove or destroy the same.

Any sum or sums for which the Assured and/or charterers and/or operators and/or lessees may become liable or incur from causes not hereinbefore specified, but which are or have heretofore been absolutely or conditionally recoverable from or undertaken by British Protection and Indemnity Clubs, but excluding loss of life or personal injury.

We will pay the Assured and/or charterers and/or operators and/or lessees such proportion of such sum or sums so paid, or which may be required to indemnify the Assured and/or charterers and/or operators and/or lessees for such loss as our respective subscriptions bear to the policy value of the dock hereby insured, and in case the liability of the Assured and/or charterers and/or operators and/or lessees has been contested, with the consent in writing of a majority of the Underwriters on the dock hereby insured (in amount), we will also pay a like proportion of the costs which the Assured and/or charterers and/or operators and/or lessees shall thereby incur or be compelled to pay.

This insurance also to pay the expenses, after deduction of the proceeds of the salvage, not recoverable under Clause 28, of the removal of the wreck of the insured dock from any place owned, leased or occupied by the Assured. Underwriters' Liability under this clause is subject to the limitations in amount provided in Clause 30. The provisions of that clause regarding the payment of costs shall apply also hereto.

It is further agreed that in all cases of common ownership of dock or other property the matter shall be dealt with in accordance with the principles laid down in the sisterhip clauses incorporated in the collision clause.

FREE OF CAPTURE AND SEIZURE CLAUSE (WAR RISK EXCLUSION)

Unless physically deleted by the Underwriters, the following warranty shall be paramount and shall supersede and nullify any contrary provision of the Policy:

Notwithstanding anything to the contrary contained in the Policy, this insurance is warranted free from any claim for loss, damage or expense caused by or resulting from capture, seizure, arrest, restraint or detainment or the consequences thereof or of any attempt thereto, or any taking of the Dock, by requisition or otherwise, whether in time of peace or war and whether lawful or otherwise; also from all consequences of hostilities or warlike operations (whether there be a declaration of war or not), but this warranty shall not exclude collision, contact with any fixed or floating object (other than a mine or torpedo), stranding, heavy weather or fire or explosion unless caused directly (and independently of the nature of the voyage or service which the vessel concerned or, in the case of a collision, any other vessel involved therein, is performing) by a hostile act by or against a belligerent power; and for the purpose of this warranty "power" includes any authority maintaining naval, military or air forces in association with a power.

Further warranted free from the consequences of civil war, revolution, rebellion, insurrection, or civil strife arising therefrom, or piracy. If war risks are hereafter insured by endorsement on the Policy, such endorsement shall supersede the above warranty only to the extent that their terms are inconsistent and only while such war risk endorsement remains in force.

NON PAYMENT OF PREMIUM CLAUSE (applicable to insurance placed in London or outside U. S. A.)

The Assured shall be directly liable to the Assurer for all premiums under this policy. If payment of premium is not made by the Assured within 10 days after attachment of the insurance or, in the event the Assurers shall have agreed to accept deferred payments, if any, payment of premium is not made on the day agreed, this policy may be cancelled by the Assurers giving to the Assured named herein five days' notice of such cancellation. A written and/or telegraphic notice by or through the brokers, or their American Correspondents, who negotiated the insurance, to said Assured at his last known address shall constitute a complete notice as required under this clause. Such cancellation shall be without prejudice to premiums earned and due for the period the policy is in force.

NON PAYMENT OF PREMIUM CLAUSE (applicable to insurance placed in U. S. A.)

The Assured shall be directly liable to the Assurer for all premiums under this policy. If payment of premium is not made by the Assured within thirty (30) days after attachment of the insurance, or, in the event the Assurers shall have agreed to accept deferred payments, if any payment of any premium is not made on the day agreed, this policy may be cancelled at any time thereafter by the Assurer giving to the Assured named herein, and to third party payee or payees (if any) named in the policy, five (5) days notice of such cancellation.

Such notice may be given either by the Assurer itself or in its behalf by the Board of Marine Underwriters of San Francisco, Incorporated. Such cancellation shall be without prejudice to the premiums earned and due for the period the policy was in force.


The terms and conditions of this form are to be regarded as substituted for those of policy form to which it is attached, the latter being hereby waived, except provisions required by law to be inserted in the Policy.

Attached to Policy No. M.L. 9350 of the LLOYDS

Dated 14th June 1956

EXHIBIT "B" TO STIPULATION OF FACTS—1a

(Page 5)

(See opposite) 

It is understood that the Assured may enter into contracts with the United States Government or departments or agencies thereof which would include a provision substantially as follows:

"Vessel will proceed to the contractor's plant under her own power or in tow of Coast Guard vessel. Contractor shall provide all necessary towage, handling etc. to place the vessel at his wharf. Contractor shall also provide all necessary towage, handling etc. to remove vessel from yard. The Government shall not be responsible for damage done to contractor's property and/or other vessels in contractor's yard, etc. while vessel is under tow of tugs provided by contractor or while vessel is being moved by contractor about the yard".

It is understood and agreed that the acceptance by the Assured of any contracts which contain said provision shall not prejudice this insurance and these Assurers waive subrogation rights against the United States Government or any departments or agencies thereof.

Where in accordance with established local practice the Assured or the Charterer enters into towage contracts under which the Assured or the Charterer assumes liability for any damages resulting from collision of the vessel insured with another ship or vessel, including the towing vessel, and agrees to indemnify the towboat and/or her owners against loss or liability for any such damage, it is agreed that amounts paid by the Assured or Charterer pursuant to such agreement, in respect of such damage caused by collision between the vessel insured and any other ship or vessel, shall be deemed payments 'by way of damages to any other person or persons' within the meaning of the Collision Clause in this policy to the extent that such payments would have been covered under the said collision clause if the insured vessel had been responsible for the damage in the absence of any agreement.

The Assured shall not be prejudiced by reason of any agreement limiting or exempting the liability of tugs, and/or tow-boats and/or their owners when the Assured is compelled to accept such contracts.

collision between the vessel insured and any other ship or vessel, shall be deemed payments 'by way of damages to any other person or persons' within the meaning of the Collision Clause in this policy to the extent that such payments would have been covered under the said collision clause if the insured vessel had been responsible for the damage in the absence of any agreement.

The Assured shall not be prejudiced by reason of any agreement limiting or exempting the liability of tugs, and/or tow-boats and/or their owners when the Assured is compelled to accept such contracts.

SERVICE OF SUIT (U.S.A.)

The place of physical and actual issue and delivery of this policy is the City of London, but nevertheless as between the Assured and the Assurers the place of suit hereon shall be deemed the United States of America, and any suit hereon may be brought against these Assurers in any Court of competent jurisdiction within the United States. The summons and other legal processes may be served on these Assurers by and in behalf of the Assured by mailing a copy thereof by United States registered mail addressed to Russel T. Mount, William B. Mendes, or Frank A. Bull, all of the law firm of Mendes and Mount, 27 William Street, New York City, New York, each of whom these Assurers hereby authorise to accept by and in their behalf such summons and other legal processes against these Assurers in any Court of competent jurisdiction within the United States. The mailing, as herein provided, of such summons or other legal process shall be deemed personal service and accepted by these Assurers as such, and shall be legal and binding upon these Assurers for all the purposes of the suit. Final judgment against these Assurers in any such suit shall be conclusive; and it may be enforced in other jurisdictions, including Great Britain by suit on the judgment, a certified or exemplified copy of which shall be conclusive evidence of the fact and of the amount of this indebtedness. The right of the Assured to bring suit as provided herein shall be limited to a suit brought in its own name and for its own account. For the purpose of suit as herein provided, the word "Assured" includes any mortgagee under a ship mortgage and any person succeeding to the rights of any such mortgagee.

IF AND WHEN A
SERVICE OF SUIT CLAUSE (NEW YORK) (MARINE)

(Approved by Lloyd's Underwriters' Association.)

Underwriters hereon hereby designate the Superintendent of Insurance of the State of New York or his successor in office their true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the (re)insured or any beneficiary hereunder arising out of this contract of (re)insurance.

Printed at Lloyd's, London, England.

11/8/49

It is understood and agreed that the F. C. & S. Clause in the attached Form is hereby deleted and the following Clause :—

Unless physically deleted by the Underwriters, the following warranty shall be paramount and shall supersede and nullify any contrary provision of the Policy :

F. C. & S. CLAUSE.

Notwithstanding anything to the contrary contained in the Policy, this insurance is warranted free from any claim for loss, damage or expense caused by or resulting from capture, seizure, arrest, restraint or detainment, or the consequences thereof or of any attempt thereat, or any taking of the Vessel, by requisition or otherwise, whether in time of peace or war and whether lawful or otherwise ; also from all consequences of hostilities or warlike operations (whether there be a declaration of war or not), but the foregoing shall not exclude collision, explosion or contact with any fixed or floating object (other than a mine or torpedo), stranding, heavy weather or fire unless caused directly (and independently of the nature of the voyage or service which the vessel concerned or, in the case of a collision, any other vessel involved therein, is performing) by a hostile act by or against a belligerent power, and for the purpose of this warranty " power " includes any authority maintaining naval, military or air forces in association with a power ; also warranted free, whether in time of peace or war, from all loss, damage or expense caused by any weapon of war employing atomic fission or radioactive force. Further warranted free from the consequences of civil war, revolution, rebellion, insurrection, or civil strife arising therefrom, or piracy.


If war risks are hereafter insured by endorsement on the Policy, such endorsement shall supersede the above warranty only to the extent that their terms are inconsistent and only while such war risk endorsement remains in force.

is substituted therefor.

1104-17.11.55.

EXHIBIT "B" TO STIPULATION OF FACTS—1a

(Page 6)

(See opposite) 

In all communications please quote
the following reference

542

... 735 ..

LLOYD'S,



LONDON.

*Counted to the
New York*

London 17th June 1950.

100.000.000.

100.000.000 0 1.0.0.1950.

100.000.000 part of 100.000.000 of
Total Valuation as attached (was attached)

IMPORTANT


Before presenting this Policy for payment of
any claim or return of premium, it is essential
that it shall bear the signature of the firm or
individual in whose name it is drawn.

(In the event of accident whereby loss or damage may
result in a claim under this Policy, the settlement
will be much facilitated if immediate notice be given
to the nearest Lloyd's Agent.)



EXHIBIT "B" TO STIPULATION OF FACTS—2a

(Page 1)

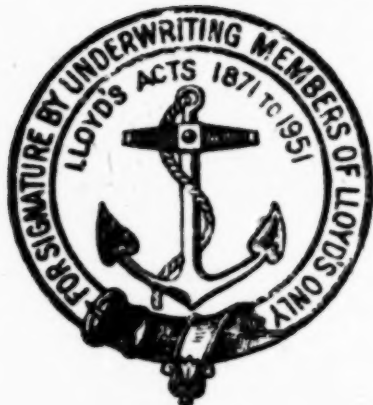
(See opposite) 

50012 * 16 SEP 1959

(No.

11.0.31,3

No Policy or other Contract dated on or after 1st Jan., 1924, will be recognised by the Committee of Lloyd's as entitling the holder to the benefit of the Funds and/or Guaranties lodged by the Underwriters of the Policy or Contract as security for their liabilities unless it bears at foot the Seal of Lloyd's Policy Signing Office.



Any person not an Underwriting Member of Lloyd's subscribing this Policy, or any person uttering the same if so subscribed, will be liable to be proceeded against under Lloyd's Acts.

S.G.

69, part of 100, of
US\$3,000,000

Printed at Lloyd's, London, England.

24.5.59

Be it known that TODD SHIPYARDS CORPORATION AND THE UNITED STATES OF AMERICA (Department of the Navy)

as well in their own Name, as for and in the Name and Names of all and every other Person or Persons to whom the same doth, may, or shall appertain, in part or in all, doth make Assurance, and cause themselves and them and every of them, to be insured, lost or not lost, at and from

and for and during the space of TWELVE CALENDAR MONTHS

Commencing Noon 13th September 1959

and ending Noon 13th September 1960

Beginning and ending with Eastern Standard Time.

Whilst at Galveston, Texas or held covered at a premium to be arranged.

upon any kind of Goods and Merchandises, and also the Body, Tackle, Apparel, Ordnance, Munition, Artillery, Boat and other Furniture, of and in the good Ship or Vessel called the

UNITED STATES NAVY THREE SECTION STEEL DRYDOCK AFDM No.1.

whereof is Master, under God, for this present Voyage,

or whosoever else shall go for Master in the said Ship, or by whatsoever other Name or Names the same Ship, or the Master thereof, is or shall be named or called, beginning the Adventure upon the said Goods and Merchandises from the loading thereof aboard the said Ship as above

upon the said Ship, &c., as above and shall so continue and endure during her Abode there, upon the said Ship, &c.; and further, until the said Ship, with all her Ordnance, Tackle, Apparel, &c., and Goods and Merchandises whatsoever, shall be arrived at as above

upon the said Ship, &c., until she hath moored at Anchor ~~in good Safety~~ in good Safety, and upon the Goods and Merchandises until the same be there discharged and safely landed; and it shall be lawful for the said Ship, &c., in this Voyage to proceed and sail to and touch and stay at any Ports or Places whatsoever and wheresoever for all purposes

without Prejudice to this Insurance. The said Ship, &c., Goods and Merchandises, &c., for so much as concerns the Assured by Agreement between the Assured and Assurers in this Policy, are and shall be valued at **HULL AND/OR MATERIALS and everything connected therewith**

Valued US\$3,000,000

Subject to the Todd Dry Dock Form as attached, including Strikes etc.
(Broad Form) as attached.

Including Waiver of Subrogation against United States Government Clause as attached.

Including Towage Contracts Clause as attached.



without prejudice for all purposes

without Prejudice to this Insurance. The said Ship, &c., Goods and Merchandises, &c., for so much as concerns the Assured by Agreement between the Assured and Assurers in this Policy, are and shall be valued at **HULL AND/OR MATERIALS and everything connected therewith**

Valued US\$3,000,000

Subject to the Todd Dry Dock Form as attached, including Strikes etc.
(Broad Form) as attached.

Including Waiver of Subrogation against United States Government Clause
as attached.

Including Towage Contracts Clause as attached.

Subject to the Service of Suit Clauses as attached.

Touching the Adventures and Perils which we the Assurers are contented to bear and do take upon us in this Voyage, they are, of the Seas, Men-of-War, Fire, Enemies, Pirates, Rovers, Thieves, Jettisons, Letters of Mart and Countermart, Surprisals, Takings at Sea, Arrests, Restraints and Detainments of all Kings, Princes and People, of what Nation, Condition, or Quality soever, Barratry of the Master and Mariners, and of all other Perils, Losses and Misfortunes that have or shall come to the Hurt, Detriment or Damage of the said Goods and Merchandises and Ship, &c., or any Part thereof; and in case of any Loss or Misfortune, it shall be lawful to the Assured, their Factors, Servants and Assigns, to sue, labour, and travel for, in and about the Defence, Safeguard and Recovery of the said Goods and Merchandises and Ship, &c., or any part thereof, without Prejudice to this Insurance; to the Charges whereof we, the Assurers, will contribute, each one according to the Rate and Quantity of his Sum herein assured. And it is especially declared and agreed that no acts of the Insurer or Insured in recovering, saving, or preserving the property insured, shall be considered as a waiver or acceptance of abandonment. And it is agreed by us, the Insurers, that this Writing or Policy of Assurance shall be of as much Force and Effect as the surest Writing or Policy of Assurance heretofore made in Lombard Street, or in the Royal Exchange, or elsewhere in London.

Warranted free of capture, seizure, arrest, restraint or detainment, and the consequences thereof or of any attempt thereat; also from the consequences of hostilities or warlike operations, whether there be a declaration of war or not; but this warranty shall not exclude collision, contact with any fixed or floating object (other than a mine or torpedo), stranding, heavy weather or fire unless caused directly (and independently of the nature of the voyage or service which the vessel concerned or, in the case of a collision, any other vessel involved therein, is performing) by a hostile act by or against a belligerent power; and for the purpose of this warranty "power" includes any authority maintaining naval, military or air forces in association with a power.

Further warranted free from the consequences of civil war, revolution, rebellion, insurrection, or civil strife arising therefrom, or piracy.

And so we, the Assurers, are contented, and do hereby promise and bind ourselves, each one for his own Part, our Heirs, Executors, and Goods, to the Assured, their Executors, Administrators, and Assigns, for the true Performance of the Premises, confessing ourselves paid the Consideration due unto us for this Assurance by the Assured

at and after the Rate of **.625 per cent including strikes, riots and civil commotions**

IN WITNESS whereof we, the Assurers, have subscribed our Names and Sums assured in **LONDON, 7th September 1959** as hereinafter appears.

N.B. Corn, Fish, Salt, Fruit, Flour, and Seed are warranted free from Average, unless general, or the Ship be stranded; Sugar, Tobacco, Hemp, Flax, Hides, and Skins are warranted free from Average under **Five Pounds per Cent.**; and all other Goods, also the Ship and Freight, are warranted free from Average under **Three Pounds per Cent.**, unless general, or the Ship be stranded

How Know We, that We the Assurers, members of the Syndicate(s) whose definitive Number(s) in the attached list are set out in the Table overleaf, or attached overleaf, hereby bind Ourselves, each for his own part and not one for another, and in respect

Touching the Adventures and Perils which we the Assurers are contented to bear and do take upon us in this Voyage, they are, of the Seas, Men-of-War, Fire, Enemies, Pirates, Rovers, Thieves, Jettisons, Letters of Mart and Countermart, Surprisals, Takings at Sea, Arrests, Restraints and Detainments of all Kings, Princes and People, of what Nation, Condition, or Quality soever, Barratry of the Master and Mariners, and of all other Perils, Losses and Misfortunes that have or shall come to the Hurt, Detriment or Damage of the said Goods and Merchandises and Ship, &c., or any Part thereof; and in case of any Loss or Misfortune, it shall be lawful to the Assured, their Factors, Servants and Assigns, to sue, labour, and travel for, in and about the Defence, Safeguard and Recovery of the said Goods and Merchandises and Ship, &c., or any part thereof, without Prejudice to this Insurance; to the Charges whereof we, the Assurers, will contribute, each one according to the Rate and Quantity of his Sum herein assured. And it is especially declared and agreed that no acts of the Insurer or Insured in recovering, saving, or preserving the property insured, shall be considered as a waiver or acceptance of abandonment. And it is agreed by us, the Insurers, that this Writing or Policy of Assurance shall be of as much Force and Effect as the surest Writing or Policy of Assurance heretofore made in Lombard Street, or in the Royal Exchange, or elsewhere in London.

Warranted free of capture, seizure, arrest, restraint or detainment, and the consequences thereof or of any attempt thereat; also from the consequences of hostilities or warlike operations, whether there be a declaration of war or not; but this warranty shall not exclude collision, contact with any fixed or floating object (other than a mine or torpedo), stranding, heavy weather or fire unless caused directly (and independently of the nature of the voyage or service which the vessel concerned or, in the case of a collision, any other vessel involved therein, is performing) by a hostile act by or against a belligerent power; and for the purpose of this warranty "power" includes any authority maintaining naval, military or air forces in association with a power.

Further warranted free from the consequences of civil war, revolution, rebellion, insurrection, or civil strife arising therefrom, or piracy.

And so we, the Assurers, are contented, and do hereby promise and bind ourselves, each one for his own Part, our Heirs, Executors, and Goods, to the Assured, their Executors, Administrators, and Assigns, for the true Performance of the Premises, confessing ourselves paid the Consideration due unto us for this Assurance by the Assured

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Now Know Ye, that We the Assurers, members of the Syndicate(s) whose definitive Number(s) in the attached list are set out in the Table overleaf, or attached overleaf, hereby bind Ourselves, each for his own part and not one for another, and in respect of his due proportion only, to pay or make good to the Assured all such Loss and/or Damage which he or they may sustain by any one or more of the aforesaid perils, and so that the due proportion for which each of Us the Assurers is liable shall be ascertained by reference to his proportion as ascertained according to the said List, of the Amount, Percentage or Proportion of the total Sum assured which is in the said Table set opposite the definitive Number of the Syndicate of which such Assurer is a member.

IN WITNESS whereof the Manager of Lloyd's Policy Signing Office has subscribed his Name on behalf of each of Us.

LLOYD'S POLICY SIGNING OFFICE,

W. P. Smith

MANAGER.



the property insured shall be considered as a waiver or acceptance of abandonment. Having been paid the consideration for this insurance, by the Assured or their assigns at and after the rate of 6.25 per cent. including pro. r. c.

5 TO RETURN 2.209275 per cent net for every 15 days of unexpired time, if this insurance be cancelled, but there shall be no cancellation or return of premium in case of total loss of the property from any cause whatsoever.

6 To pay averages in full irrespective of percentage and repairs to be paid without deduction of new for old.

7 WITH LEAVE to sail with or without pilots, be towed, and to assist vessels and/or craft in all situations and to any extent to render salvage services, and to go on trial trips. Including risks of drydocking, undocking or changing docks or moving in harbours and going on and/or off slipway, gridiron or graving dock or pontoons as often as may be required and to adjust compasses.

8 General Average, Salvage and Special Charges payable as provided in the contract of affreightment, or failing such provisions, or there be no contract of affreightment, payable in accordance with the Laws and Usages of the Port of New York or San Francisco. Provided always that when an adjustment according to the laws and usages of the port of destination is properly demanded by the owners of the cargo, General Average shall be paid in accordance with same.

9 When the contributory value of the dock is greater than the valuation herein the liability of these Underwriters for General Average contribution (except in respect to amount made good to the dock) or Salvage shall not exceed that proportion of the total contribution due from the dock that the amount insured hereunder bears to the contributory value; and if because of damage for which these Underwriters are liable as Particular Average the value of the dock has been reduced for the purpose of contribution, the amount of the Particular Average claim under this Policy shall be deducted from the amount insured hereunder and these Underwriters shall be liable only for the proportion which such net amount bears to the contributory value.

10 This insurance also specially to cover cost of repairs, and/or loss of or damage to the property hereby insured, directly caused by accidents in loading, discharging or handling cargo or by any object whatsoever coming in contact therewith, or caused through negligence and/or error of judgment of Master, Mariners, Engineers, or other servants or employees of the Owners and/or Charterers and/or Operators and/or Lessees. Pilots, Servants, or Employees of Port, Harbour or Dock Authorities, Stevedores, Labourers, Tradesmen or other Persons in, on or about the Dock, or through contact with air-craft, or objects dropping therefrom, or through explosions, howsoever or wheresoever occurring, bursting of boilers, breakage of machinery or shafts, or through any latent defect in the Machinery or Hull (excluding, however, the cost and expense of repairing or renewing the defective part), causing loss or injury to the property hereby insured, provided such loss or damage has not resulted from want of due diligence by the owners of the dock, or any of them, or by the Manager, and to cover all risks incidental to Navigation, or in graving docks, Master, Mates, Engineers, Pilots, or crew not to be considered as part owners within the meaning of this clause should they hold shares in the property. Seaworthiness admitted.

~~THIS INSURANCE ALSO COVERS ALL LOSS AND/OR DAMAGE AND/OR EXPENSE CAUSED TO THE DOCK HEREBY INSURED BY ANY VESSEL AND/OR CRAFT AND/OR STRUCTURE ENTERING AND/OR IN AND/OR LEAVING THE DOCK.~~

Including loss or damage directly or indirectly caused by earthquake, volcanic eruption, or tidal wave.

This policy also covers all loss and/or damage and/or expense caused to the dock hereby insured by any vessel and/or craft and/or structure entering and/or in and/or leaving the dock.

IN THE EVENT of this policy beginning or ending while the dock is in course of a voyage, underwriters agree to pay their proportion of loss or damage sustained while the policy is in force, provided the loss or damage sustained on the entire voyage would have been recoverable, if this policy had covered such voyage in its entirety.

No recovery for a Constructive Total Loss shall be had hereunder, unless the expense of recovering and repairing the dock shall exceed the insured value.

IN ASCERTAINING whether the dock is a constructive total loss the insured value shall be taken as the repaired value, and nothing in respect of the damaged or break-up value of the dock or wreck shall be taken into account.

IN NO CASE shall the Insurers be liable for unrepaired damage in addition to a subsequent total loss sustained during the term covered by this policy.

IT IS AGREED that any change of interest in the property hereby insured, shall not affect the validity of this policy.

HELD COVERED in case of any breach of warranty as to trade, locality or description provided notice be given, and any additional premium required be agreed as soon as practicable after receipt of advices.

Warranted free of liability for damage done to vessels, craft and/or structures or their cargoes or their freight whilst going on, whilst on and/or whilst going off the dock insured hereunder.


It is agreed to substitute the words "Marine Railway" for the word "Dock", where or whenever required.

FULL COLLISION AND SISTER SHIP COLLISION CLAUSE

And it is further agreed that if the Dock hereby insured shall come into collision with any Ship or Vessel and the Assured or the Charterers or Operators or Lessees in consequence thereof or the Surety for any or all of them in consequence of their undertaking shall become liable to pay and shall pay by way of damages to any other person or persons any sum or sums in respect of such collision, we, the Underwriters, will pay the Assured or Charterers or Operators or Lessees such proportion of such sum or sums so paid as our respective subscriptions hereto bear to the value of the Dock hereby insured, provided always that our liability in respect of any one such collision shall not exceed our proportionate part of the value of the Dock hereby insured. And in cases where the liability of the Dock has been contested, or proceedings have been taken to limit liability, with the consent in writing of a majority (in amount) of the Underwriters on the dock, etc., we will also pay a like proportion of the costs which the Assured or Charterers or Operators or Lessees shall thereby incur, or be compelled to pay; but when both Dock and Vessel are to blame, then, unless the liability of the Owners or Charterers or Operators or Lessees of one or both of such Dock and Vessel become limited by law, claims under the Collision Clause shall be settled on the principle of Cross Liability as if the Owners or Charterers or Operators or Lessees of each had been compelled to pay to the Owners or Charterers or Operators or Lessees of the other such one-half or other proportion of the latter's damages as may have been properly allowed in ascertaining the balance or sum payable by or to Assured or Charterers or Operators or Lessees in consequence of such collision.

EXHIBIT "B" TO STIPULATION OF FACTS—2a

(Page 2)

(See opposite) 

Definitive Numbers of the Syndicates and Amount, Percentage or Proportion of the
Total Amount insured shared between the Members of those Syndicates.

The percentages signed in the
percentage of the total amount
(i.e. US\$3,000,000) and not
of the policy amount.



AMOUNT PERCENTAGE OR PROPORTION
CENT

1.58
.26
.11
2.68
2.81
.31
3.35
1.34
1.78
.18
.27
2.23
1.56
1.34
.45
1.56
.29
1.07
.21
.21
.22
1.12
.90
1.67
.67
2.90

BROKER'S NO.	L.P.S.O. NO.	L.P.S.O. DATE
5425	001216	0597
SYNDICATE		
665	8	59
2595	8	59
3515	8	59
3355	50	7/59
934A	7/DK	31/59
941A	7/DK	31/59
4481	8	H/C 83
6210	8	59 TCD
1850	099	18 8 59
1870	099	18 8 59
2000	099	18 8 59
1820	0/01X	7/62
9951	0	8 59
4381	0	8 59
3541	8	8 59
3681	8	8
2631	0	8
4501	9	8
9021	9	8
9991	9	8
1581	9	8
3165	7 T	19 8
5901	9	8 59
2741	8	8 59
2321	9G59	DOCK 35
4181	AG59	PWD 21

AMOUNT PERCENTAGE OR PROPORTION

.22
1.56
.00
.56
.80
.45
.22
.45
.89
.33
.89
1.12
1.34
.45
.45
.33
.89
.12
.11
.89
.89
.67
.22
.22
.71
.18

BROKER'S NO. L.P.S.O. NO. L.P.S.O. DATE

BROKER'S NO.	L.P.S.O. NO.	L.P.S.O. DATE
5425	001216	0597
SYNDICATE		
20AK	7/10	8 50
720H	10	8 50
8910	8	
6071	0	8
1231	0	8
2471	8	8
1251	8	8
6541	0	8
2818	8	8 50
2718	8	8 50
1658	ENL	
4830	0/20	
7853	73/18	8 59
4771	9	8
8171	9	8 TO 5
3091	0	8
2590	CRAFT	18G59
2580	CRAFT	18G59
2720	CRAFT	18G59
4019	8	8 59
7541	9	8 27 T
5019	8	8 59
5119	8	8 59
7421	9G59	DOCK 8
5351	9	8
5361	9	8

AMOUNT PERCENTAGE OR PROPORTION

BROKER'S NO.

L.P.S.O. SLIP NO.

L.P.S.O. DATE



AMOUNT PERCENTAGE OR PROPORTION

BROKER'S NO.

L.P.S.O. SLIP NO.

L.P.S.O. DATE

.21 9021 9 8
 .21 9991 9 8
 .22 1581 9 8
 1.12 315 57 T 19 A
 .90 5901 9 8 59
 1.67 2741 8 8 59
 .67 2321 9G59 DOCK 95
 2.90 4181 1 AG59 PWD 2 1

.11
 .A9
 .A9
 .67
 .22
 .22
 .71
 .18

272 CRAFT 1 AG 59
 401 9 8 59
 7541 9 8 27 T
 501 9 8 59
 511 9 8 59
 7421 9G59 DOCK 9
 5351 9 8
 5361 9 8

AMOUNT PERCENTAGE OR PROPORTION

BROKER'S NO. LPSO SLIP NO. LPSO DATE
 5425 001216 059

SYNDICATE UNDERWRITER'S REFERENCE

.11 4211 1 AG59 PWD 2 1
 .06 4191 1 AG59 PWD 2 1
 1.43 7071 1 8 8 59
 .36 7331 1 8 8 59
 1.78 1081 1 8 8
 .45 1011 1 8 8
 .60 6321 1 8 8
 .74 6331 1 8 8
 .67 8981 1 8 8 59
 .67 725 AK / MIS C
 .45 8681 1 9 8 C
 .22 5021 1 9 8 C
 .78 6211 1 9 8 59 DO
 .45 3291 1 9 8
 .50 4651 1 9 8 59
 .17 8881 1 9 8 59
 .90 8551 1 9 8 DK 959
 1.12 2131 1 9 8 5062
 .22 2061 1 9 8 5062
 .22 2031 1 9 8 5062
 .22 2071 1 9 8 5062
 .90 3041 1 8 8 59 T 7 1
 .90 7641 1 8 8 59 PR
 1.12 2991 1 8 8 59 C 14
 .22 2981 1 8 8 59 C 14
 .90 22 AK / 19 8 59

AMOUNT PERCENTAGE OR PROPORTION

BROKER'S NO. LPSO SLIP NO. LPSO DATE
 5425 001216 059


SYNDICATE UNDERWRITER'S REFERENCE

.45 7901 1 8 8
 .56 2221 1 8 8
 .11 2241 1 8 8
 .22 3201 1 9 8 59
 .33 926 AK / 19 8 59
 .33 2841 1 9 8 59
 .31 1140 / S
 .07 1110 / S
 .07 3190 / S
 .22 3151 1 9 8 59 01
 .33 801 1 9 8
 .67 1151 1 9 8
 .50 3801 1 9 5 59
 .22 2641 1 9 8 59
 .33 3951 1 9 8
 .33 2871 1 9 8 59 9 / MC
 .22 341 1 9 8 59
 .22 663 T 19 8 59
 .33 3581 1 9 8 59



EXHIBIT "B" TO STIPULATION OF FACTS—2a

(Page 3)

(See opposite) 

Loss, if any, under this policy shall be adjusted with Todd Shipyards Corporation and the proceeds at the direction of the Government shall be payable to Todd Shipyards Corporation; and proceeds not paid to Todd Shipyards Corporation shall be payable to the Treasurer of the United States of America.

The Assured shall be directly liable to the Assurers for all premiums under this policy. In the event of the non-payment of premium hereunder when due the Assurers may cancel this policy by giving thirty (30) days' written notice to Todd Shipyards Corporation and the Department of the Navy, Office of Naval Material, Insurance Branch, Washington, 25, D.C. A written and/or telegraphic notice by or through the brokers who negotiated the insurance to Todd Shipyards Corporation at their last known address and to the Department of the Navy, Office of Naval Material, Insurance Branch, Washington, 25, D.C. shall constitute a complete notice as required under this clause. Such cancellation shall be without prejudice to premiums earned and due for the period the policy is in force.

The value of dock equipment, if any, owned by the Assured and situated on shore such as switchboards, transformers, electrical equipment, panels etc. not to exceed 10% of the total valuation.

This insurance also covers damage to or destruction of the property insured directly caused by strikers, locked-out workmen or persons taking part in labor disturbances or riots or civil commotions or caused by vandalism, sabotage or malicious mischief, but excluding civil war, revolution rebellion, or insurrection or civil strife arising therefrom and warranted free from any claim for delay, detention or loss of use.

Notwithstanding the exclusions in the F.C. & S. Clause in the within policy "vandalism", "sabotage" and "malicious mischief" as used herein, shall be construed to include wilful or malicious physical injury to or destruction of the described property caused by acts committed by an agent of any Government party or faction engaged in war, hostilities or other warlike operations, provided such agent is acting secretly and not in connection with

at the direction of the
to Todd Shipyards Corporation; and proceeds
to Todd Shipyards Corporation shall be payable to the
Treasurer of the United States of America.

The Assured shall be directly liable to the Assurers for all premiums under this policy. In the event of the non-payment of premium hereunder when due the Assurers may cancel this policy by giving thirty (30) days' written notice to Todd Shipyards Corporation and the Department of the Navy, Office of Naval Material, Insurance Branch, Washington, 25, D.C. A written and/or telegraphic notice by or through the brokers who negotiated the insurance to Todd Shipyards Corporation at their last known address and to the Department of the Navy, Office of Naval Material, Insurance Branch, Washington, 25, D.C. shall constitute a complete notice as required under this clause. Such cancellation shall be without prejudice to premiums earned and due for the period the policy is in force.

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TODD SHIPYARDS CORPORATION AND THE UNITED STATES OF AMERICA (Department of the Navy)

FOR ACCOUNT OF WHOM IT MAY CONCERN. LOSS, IF ANY, PAYABLE IN FUNDS CURRENT IN UNITED STATES OF AMERICA, TO

AS ATTACHED

OR ORDER

DO MAKE INSURANCE AND CAUSE TO BE INSURED

AT AND FROM THE 13th DAY OF September, 1959 AT NOON Eastern Standard TIME
UNTIL THE 13th DAY OF September, 1960 AT NOON Eastern Standard TIME
FOR US\$ 3,000,000 - hereto 69.00%

As employment may offer, in port or at sea, in docks and graving docks, and on ways, gridirons and pontoons, at all times, in all places and on all occasions, services and trades whatsoever and wheresoever, under power or sail, upon the Body, Tackle, Apparel, Machinery, Pumps, Equipment, Cradles, Power House, Hauling Machinery, Boilers, &c., Ordnance, Munitions, Stores, Artillery, Boat and other Furniture or equipment of whatever nature and everything connected therewith of and in the good

UNITED STATES NAVY TUG SECTION/D. Y. L. C. AND P. O. 1.

3122

or by whatsoever other name or names the said dock is or shall be named or called, beginning the adventure upon the said dock, &c., as above, and shall so continue and endure during the period as aforesaid. Should the above dock at the expiration of this policy be at sea, or in distress, or at a port of refuge or of call, she shall, provided previous notice be given to the Underwriters be held covered at a pro rata monthly premium to her port of destination, and it shall be lawful for the said dock, &c., to proceed and sail to and touch and stay at any Ports or Places whatsoever and wheresoever without prejudice to this insurance. The said dock, &c., for so much as concerns the Assured, by agreement between the Assured and Assurers in this policy, is and shall be valued for all purposes of this insurance at \$ 3,000,000

- 3 Privilege to use dry dock sections separately or collectively without prejudice to this insurance.
- 4 TOUCHING the adventures and perils which we, the said assurers, are contented to bear and take upon us, they are of the Seas, Rivers, Lakes, Harbors, Fire, Pirates, Rovers, Assaulting Thieves, Jettisons, Explosions, Riots, and all other perils, losses, and misfortunes of whatsoever nature arising either on shore or otherwise that have or shall come to the hurt, detriment, or damage of said dock, &c., or any part thereof. And in the case of any loss or misfortune it shall be lawful for the assured, their factors, servants and assigns, to sue, labor and travel for, in, and about the defense, safeguard and recovery of the said dock, &c., or any part thereof, without prejudice to this insurance; to the charges whereof the said insurance company will contribute according to the Rate and Quantity of the sum herein insured. And it is expressly declared and agreed that no acts of the insurer or insured in recovering, saving, or preserving the property insured shall be considered as a waiver or acceptance of abandonment. Having been paid the consideration for this insurance, by the Assured or their assigns at and after the rate of 625 per cent. Inc. in 2.0.0.0.0.
- 5 TO RETURN 2.3.0.275 per cent net for every 15 days of unexpired time, if this insurance be cancelled, but there shall be no cancellation or return of premium in case of total loss of the property from any cause whatsoever.
- 6 To pay averages in full irrespective of percentage and repairs to be paid without deduction of new for old.
- 7 WITH LEAVE to sail with or without pilots, be towed, and to assist vessels and/or craft in all situations and to any extent to render salvage services, and to go on trial trips. Including risks of drydocking, undocking or changing docks or moving in harbours and going on and/or off slipway, gridiron or graving dock or pontoons as often as may be required and to adjust compasses.
- 8 General Average, Salvage and Special Charges payable as provided in the contract of affreightment, or failing such provisions, or there be no contract of affreightment, payable in accordance with the Laws and Usages of the Port of New York or San Francisco. Provided always that when an adjustment according to the laws and usages of the port of destination is properly demanded by the owners of the cargo, General Average shall be paid in accordance with same.
- 9 When the contributory value of the dock is greater than the valuation herein the liability of these Underwriters for General Average contribution (except in respect to amount made good to the dock) or Salvage shall not exceed that proportion of the total contribution due from the dock that the amount insured hereunder bears to the contributory value; and if because of damage for which these Underwriters are liable as Particular Average the value of the dock has been reduced for the purpose of contribution, the amount of the Particular Average claim under this Policy shall be deducted from the amount insured hereunder and these Underwriters shall be liable only for the proportion which such net amount bears to the contributory value.
- 10 This insurance also specially to cover cost of repairs, and/or loss of or damage to the property hereby insured, directly caused by accidents in loading, discharging or handling cargo or by any object whatsoever coming in contact therewith, or caused through negligence and/or error of judgment of Master, Mariners, Engineers, or other servants or employees of the Owners and/or Charterers and/or Operators and/or Lessees. Pilots, Servants, or Employees of Port, Harbour or Dock Authorities, Stevedores, Labourers, Tradersmen or other Persons in, on or about the dock, or through contact with it.

damaged or break-up value of the dock or wreck shall be taken into account.

IN NO CASE shall the Insurers be liable for unrepaired damage in addition to a subsequent total loss sustained during the term covered by this policy.

IT IS AGREED that any change of interest in the property hereby insured, shall not affect the validity of this policy.

HELD COVERED in case of any breach of warranty as to trade, locality or description provided notice be given, and any additional premium required be agreed as soon as practicable after receipt of advices.

Warranted free of liability for damage done to vessels, craft and/or structures or their cargoes or their freight whilst going on, whilst on and/or whilst going off the dock insured hereunder.

It is agreed to substitute the words "Marine Railway" for the word "Dock", where or whenever required.

FULL COLLISION AND SISTER SHIP COLLISION CLAUSE

And it is further agreed that if the Dock hereby insured shall come into collision with any Ship or Vessel and the Assured or the Charterers or Operators or Lessees in consequence thereof or the Surety for any or all of them in consequence of their undertaking shall become liable to pay and shall pay by way of damages to any other person or persons any sum or sums so paid as our respective subscriptions hereto bear to the value of the Dock hereby insured, or Operators or Lessees such proportion of such sum or sums in respect of such collision, we, the Underwriters, will pay the Assured or Charterers or Operators or Lessees such proportion of such sum or sums so paid as our respective subscriptions hereto bear to the value of the Dock hereby insured. And in provided always that our liability in respect of any one such collision shall not exceed our proportionate part of the value of the Dock hereby insured. And in cases where the liability of the Dock has been contested, or proceedings have been taken to limit liability, with the consent in writing of a majority (in amount) of the Underwriters on the dock, etc., we will also pay a like proportion of the costs which the Assured or Charterers or Operators or Lessees shall thereby incur, or be compelled to pay; but when both Dock and Vessel are to blame, then, unless the liability of the Owners or Charterers or Operators or Lessees of one or both of such Dock and Vessel become limited by law, claims under the Collision Clause shall be settled on the principle of Cross Liability as if the Owners or Charterers or Operators or Lessees of each had been compelled to pay to the Owners or Charterers or Operators or Lessees of the other such one-half or other proportion of the latter's damages as may have been properly allowed in ascertaining the balance or sum payable by or to Assured or Charterers or Operators or Lessees in consequence of such collision; and it is further agreed that the principles involved in this clause shall apply to the case where both Dock and Vessel are the property, in part or in whole, of the same Owners or Charterers or Operators or Lessees, all questions of responsibility and amount of liability as between the two being left to the decision of a single Arbitrator, if the parties can agree upon a single Arbitrator, or failing such agreement, to the decision of Arbitrators, one to be appointed by the Managing Owners or Charterers or Operators or Lessees of both and one to be appointed by the majority (in amount) of Underwriters interested; the two Arbitrators chosen to choose a third Arbitrator before entering upon the reference, and the decision of such single, or of any two of such three Arbitrators, appointed as above to be final and binding. PROVIDED ALWAYS THAT THIS CLAUSE SHALL ALSO EXTEND to any sum which the Assured or Charterers or Operators or Lessees may become liable to pay or shall pay for removal of obstructions under statutory powers, for injury to harbors, wharves, piers, stages and similar structures, consequent on such collision, or in respect of the Insured Dock BUT EXCLUDING LIABILITY FOR LOSS OF LIFE OR PERSONAL INJURY.

And it is further agreed that in the event of salvage, towage or other assistance being rendered to the Dock hereby insured by any Vessel belonging in part or in whole to the same Owners or Charterers or Operators or Lessees, the value of such services (without regard to the common ownership or control of the Vessel) shall be ascertained by arbitration in the manner above provided for under the Collision Clause, and the amount so awarded so far as applicable to the interest hereby insured shall constitute a charge under this Policy.

PROTECTION AND INDEMNITY CLAUSE

AND WE FURTHER AGREE that if the Assured and/or charterers and/or operators and/or lessees shall become liable to pay and shall pay any sum or sums in respect of any responsibility, claim, demand, damages, and/or expenses or shall incur any other loss arising from or occasioned by any of the following matters or things during the currency of this policy in respect of the dock hereby insured, that is to say:

25 Loss or damage in respect of any other ship or boat or in respect of any goods, merchandise, freight or other things or interests whatsoever on board such other ship or boat, caused proximately or otherwise by the dock insured in so far as the same is not covered by the Collision Clause herein set forth.

26 Loss or damage to any goods, merchandise, freight or other things or interests whatsoever, other than as aforesaid, whether on board the said dock or not which may arise from any cause whatever.

27 Loss or damage to any harbor, dock, graving or otherwise, slipway, way, gridiron, pontoon, pier, quay, jetty, stage, buoy, telegraph cable, or other fixed or movable thing whatsoever or to any goods or property in or on or about the same, howsoever caused.

28 Any attempted or actual raising, removal or destruction of the wreck of the said dock or the cargo thereof, or any neglect or failure to raise, remove or destroy the same.

29 Any sum or sums for which the Assured and/or charterers and/or operators and/or lessees may become liable or incur from causes not hereinbefore specified, but which are or have heretofore been absolutely or conditionally recoverable from or undertaken by British Protection and Indemnity Clubs, but excluding loss of life or personal injury.

30 We will pay the Assured and/or charterers and/or operators and/or lessees such proportion of such sum or sums so paid, or which may be required to indemnify the Assured and/or charterers and/or operators and/or lessees for such loss as our respective subscriptions bear to the policy value of the dock hereby insured, and in case the liability of the Assured and/or charterers and/or operators and/or lessees has been contested, with the consent in writing of a majority of the Underwriters on the dock hereby insured (in amount), we will also pay a like proportion of the costs which the Assured and/or charterers and/or operators and/or lessees shall thereby incur or be compelled to pay.

31 This insurance also to pay the expenses, after deduction of the proceeds of the salvage, not recoverable under Clause 28, of the removal of the wreck of the insured dock from any place owned, leased or occupied by the Assured. Underwriters' Liability under this clause is subject to the limitations in amount provided in Clause 30. The provisions of that clause regarding the payment of costs shall apply also hereto.

32 It is further agreed that in all cases of common ownership of dock or other property the matter shall be dealt with in accordance with the principles laid down in the sistership clauses incorporated in the collision clause.

FREE OF CAPTURE AND SEIZURE CLAUSE (WAR RISK EXCLUSION)

Unless otherwise deleted by the Underwriters, the following warranty shall be paramount and shall supersede and nullify any contrary provision

or other fixed or movable thing whatsoever or to any goods or property in or on or about the same, howsoever caused.

Any attempted or actual raising, removal or destruction of the wreck of the said dock or the cargo thereof, or any neglect or failure to raise, remove or destroy the same.

Any sum or sums for which the Assured and/or charterers and/or operators and/or lessees may become liable or incur from causes not hereinbefore specified, but which are or have heretofore been absolutely or conditionally recoverable from or undertaken by British Protection and Indemnity Clubs, but excluding loss of life or personal injury.

We will pay the Assured and/or charterers and/or operators and/or lessees such proportion of such sum or sums so paid, or which may be required to indemnify the Assured and/or charterers and/or operators and/or lessees for such loss as our respective subscriptions bear to the policy value of the dock hereby insured, and in case the liability of the Assured and/or charterers and/or operators and/or lessees has been contested, with the consent in writing of a majority of the Underwriters on the dock hereby insured (in amount), we will also pay a like proportion of the costs which the Assured and/or charterers and/or operators and/or lessees shall thereby incur or be compelled to pay.

This insurance also to pay the expenses, after deduction of the proceeds of the salvage, not recoverable under Clause 28, of the removal of the wreck of the insured dock from any place owned, leased or occupied by the Assured. Underwriters' Liability under this clause is subject to the limitations in amount provided in Clause 30. The provisions of that clause regarding the payment of costs shall apply also hereto.

It is further agreed that in all cases of common ownership of dock or other property the matter shall be dealt with in accordance with the principles laid down in the sisterhip clauses incorporated in the collision clause.

FREE OF CAPTURE AND SEIZURE CLAUSE (WAR RISK EXCLUSION)

Unless physically deleted by the Underwriters, the following warranty shall be paramount and shall supersede and nullify any contrary provision of the Policy:

Notwithstanding anything to the contrary contained in the Policy, this insurance is warranted free from any claim for loss, damage or expense caused by or resulting from capture, seizure, arrest, restraint or detainment or the consequences thereof or of any attempt thereat, or any taking of the Dock, by requisition or otherwise, whether in time of peace or war and whether lawful or otherwise; also from all consequences of hostilities or warlike operations (whether there be a declaration or war or not), but this warranty shall not exclude collision, contact with any fixed or floating object (other than a mine or torpedo), stranding, heavy weather or fire or explosion unless caused directly (and independently of the nature of the voyage or service which the vessel concerned or, in the case of a collision, any other vessel involved therein, is performing) by a hostile act by or against a belligerent power; and for the purpose of this warranty "power" includes any authority maintaining naval, military or air forces in association with a power.

Further warranted free from the consequences of civil war, revolution, rebellion, insurrection, or civil strife arising therefrom, or piracy. If war risks are hereafter insured by endorsement on the Policy, such endorsement shall supersede the above warranty only to the extent that their terms are inconsistent and only while such war risk endorsement remains in force.

NON PAYMENT OF PREMIUM CLAUSE (applicable to insurance placed in London or outside U. S. A.)

The Assured shall be directly liable to the Assurer for all premiums under this policy. If payment of premium is not made by the Assured within 10 days after attachment of the insurance or, in the event the Assurers shall have agreed to accept deferred payments, if any, payment of premium is not made on the day agreed, this policy may be cancelled by the Assurers giving to the Assured named herein five days' notice of such cancellation. A written and/or telegraphic notice by or through the brokers, or their American Correspondents, who negotiated the insurance, to said Assured at his last known address shall constitute a complete notice as required under this clause. Such cancellation shall be without prejudice to premiums earned and due for the period the policy is in force.

NON PAYMENT OF PREMIUM CLAUSE (applicable to insurance placed in U. S. A.)

The Assured shall be directly liable to the Assurer for all premiums under this policy. If payment of premium is not made by the Assured within thirty (30) days after attachment of the insurance, or, in the event the Assurers shall have agreed to accept deferred payments, if any payment of any premium is not made on the day agreed, this policy may be cancelled at any time thereafter by the Assurers giving to the Assured named herein, and to third party payee or payees (if any) named in the policy, five (5) days' notice of such cancellation. Such notice may be given either by the Assurer itself or in its behalf by the Board of Marine Underwriters of San Francisco, Incorporated. Such cancellation shall be without prejudice to the premiums earned and due for the period the policy was in force.

The terms and conditions of this form are to be regarded as substituted for those of policy form to which it is attached, the latter being hereby waived, except provisions required by law to be inserted in the Policy.

Attached to Policy No. H.D. 2193 of the 11. Y. 1959

Dated 7th September, 1959

53101 * 14 AUG 1959

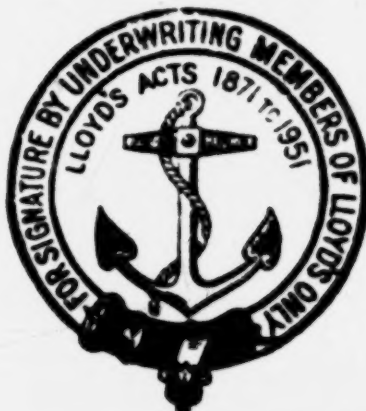
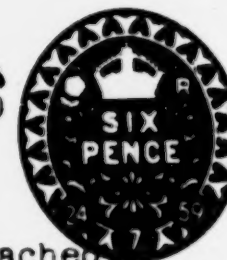
No Policy or other Contract dated on or after 1st Jan., 1924, will be recognised by the Committee of Lloyd's as entitling the holder to the benefit of the Funds and/or Guarantees lodged by the Underwriters of the Policy or Contract as security for their liabilities unless it bears at foot the Seal of Lloyd's Policy Signing Office.

J (A)

Form approved by Lloyd's
Underwriters' Fire and
Non Marine Association.

LLOYD'S POLICY

(Subscribed only by Underwriting Members of Lloyd's all of whom have complied with the requirements of the Insurance Companies Act, 1958, as to security and otherwise.)



Any person not an Underwriting Member of Lloyd's subscribing this Policy, or any person uttering the same if so subscribed, will be liable to be proceeded against under Lloyd's Acts.

Whereas TODD SHIPYARDS CORPORATION etc., - as attached,

~~of~~

(hereinafter called "the Assured"), have paid \$18,534.51

Premium or Consideration to Us, who have hereunto subscribed our Names to Insure against Loss as follows:-

\$1.000 = US\$1,087,335

PIERS AND/OR PLANT etc., - as per schedule attached valued at \$1,332,600.

Printed at Lloyd's, London, England.


12378

Subject to the clauses as attached.

No. 52/24 / 68/24

EXHIBIT "B" TO STIPULATION OF FACTS—2a

(Page 4)

(See opposite) 

U.S. GOVERNMENT CONTRACT CLAUSE

It is understood that the Assured may enter into contracts with the United States Government or departments or agencies thereof which would include a provision substantially as follows:-

"Vessel will proceed to the contractor's plant under her own power or in tow of Coast Guard vessel. Contractor shall provide all necessary towage, handling etc. to place the vessel at his wharf. Contractor shall also provide all necessary towage, handling etc. to remove vessel from yard. The Government shall not be responsible for damage done to contractor's property and/or other vessel in contractor's yard etc. while vessel is under tow of tugs provided by contractor or while vessel is being moved by contractor about the yard". }

It is understood and agreed that the acceptance by the Assured of any contracts which contain said provision shall not prejudice this insurance and these Assurers waive subrogation rights against the United States Government or any departments or agencies thereof.

TOWAGE CONTRACT CLAUSES

Where in accordance with established local practice, the Assured or the charterer or the agent of the Assured enters into towage contracts under which the Assured, the charterer or the agent of the Assured assumes liability for any damages resulting from collision of the vessel insured with another ship or vessel including the towing vessel, and agrees to indemnify the towboat, her owners, charterers, operators, managers, agents and/or pilots against loss or liability for any such damage, it is agreed that amounts paid by the Assured, charterer or the agent of the Assured pursuant to such agreement, in respect of such damage caused by collision between the vessel insured and any other ship or vessel, shall be deemed payments 'by way of damages to any other person or persons' within the meaning of the Collision Clause in this policy to the extent that such payments would

under which the Assured, the charterer or the agent of the Assured assumes liability for any damages resulting from collision of the vessel insured with another ship or vessel including the towing vessel, and agrees to indemnify the towboat, her owners, charterers, operators, managers, agents and/or pilots against loss or liability for any such damage, it is agreed that amounts paid by the Assured, charterer or the agent of the Assured pursuant to such agreement, in respect of such damage caused by collision between the vessel insured and any other ship or vessel, shall be deemed payments 'by way of damages to any other person or persons' within the meaning of the Collision Clause in this policy to the extent that such payments would have been covered under the said Collision Clause if the insured vessel had been responsible for the damage in the absence of any agreement.

The Assured shall not be prejudiced by reason of any agreement limiting or exempting the liability of tugs and/or towboats and/or their owners when the Assured is compelled to accept such contracts.

SERVICE OF SUIT (U.S.A.)

The place of physical and actual issue and delivery of this policy is the City of London, but nevertheless as between the Assured and the Assurers the place of suit hereon shall be deemed the United States of America, and any suit hereon may be brought against these Assurers in any Court of competent jurisdiction within the United States. The summons and other legal processes may be served on these Assurers by and in behalf of the Assured by mailing a copy thereof by United States registered mail addressed to Russel T. Mount, Wilbur H. Hecht, or Frank A. Bull, all of the law firm of Mendes and Mount, 27 William Street, New York, City, New York, each of whom these Assurers hereby authorize to accept by and in their behalf such summons and other legal processes against these Assurers in any Court of competent jurisdiction within the United States. The mailing, as herein provided, of such summons or other legal process shall be deemed personal service and accepted by these Assurers as such, and shall be legal and binding upon these Assurers for all the purposes of the suit. Final judgment against these Assurers in any such suit shall be conclusive, and it may be enforced in other jurisdictions, including Great Britain by suit on the judgment, a certified or

The place of physical and actual issue and delivery of this policy is the City of London, but nevertheless as between the Assured and the Assurers the place of suit hereon shall be deemed the United States of America, and any suit hereon may be brought against these Assurers in any Court of competent jurisdiction within the United States. The summons and other legal processes may be served on these Assurers by and in behalf of the Assured by mailing a copy thereof by United States registered mail addressed to Russel T. Mount, Wilbur H. Hecht, or Frank A. Bull, all of the law firm of Mendes and Mount, 27 William Street, New York, City, New York, each of whom these Assurers hereby authorize to accept by and in their behalf such summons and other legal processes against these Assurers in any Court of competent jurisdiction within the United States. The mailing, as herein provided, of such summons or other legal process shall be deemed personal service and accepted by these Assurers as such, and shall be legal and binding upon these Assurers for all the purposes of the suit. Final judgment against these Assurers in any such suit shall be conclusive, and it may be enforced in other jurisdictions, including Great Britain by suit on the judgment, a certified or exemplified copy of which shall be conclusive evidence of the fact and of the amount of this indebtedness. The right of the Assured to bring suit as provided herein shall be limited to a suit brought in its own name and for its own account. For the purpose of suit as herein provided, the word "Assured" includes any mortgagee under a ship mortgage and any person succeeding to the rights of any such mortgagee.

IF AND WHEN APPLICABLE


SERVICE OF SUIT CLAUSE (NEW YORK) (MARINE)

(Approved by Lloyd's Underwriters' Association.)

Underwriters hereon hereby designate the Superintendent of Insurance of the State of New York or his successor in office their true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the (re)insured or any beneficiary hereunder arising out of this contract of (re)insurance.

EXHIBIT "B" TO STIPULATION OF FACTS—2a

(Page 5)

(See opposite) 

In all communications please quote
the following reference

542

H.D.3193

LLOYD'S



LONDON

Griswold & Co., Inc.

New York City

London 7th September 1959.

U.S. NAVY THREE SECTION STEEL DRYDOCK

12 months @ N.13.9.1959

£ 69% part of 100% of
US\$3,000,000 @ .625 %

IMPORTANT.

Before presenting this Policy for payment of
any claim or return of premium, it is essential
that it shall bear the signature of the firm or
individual in whose name it is drawn.

U.S. NAVY THREE SECTION STEEL BRIDOCK

12 months @ N.13.9.1959

69% part of 100% of
US\$3,000,000 @ .625 %

IMPORTANT.

Before presenting this Policy for payment of any claim or return of premium, it is essential that it shall bear the signature of the firm or individual in whose name it is drawn.

(In the event of accident whereby loss or damage may result in a claim under this Policy, the settlement will be much facilitated if immediate notice be given to the nearest Lloyd's Agent.)


(E)

95

104

EXHIBIT "B" TO STIPULATION OF FACTS—3a

(Page 1)

(See opposite) 

during the period commencing with the 16th

of May, 1959 and ending with the 16th

of May, 1960 ~~both days included~~ beginning and ending with 12.01 am., Eastern Standard Time

If the Assured shall make any claim knowing the same to be false or fraudulent, as regards amount or otherwise, this Policy shall become void, and all claim thereunder shall be forfeited.

NOW KNOW YE, that We the Underwriters, members of the Syndicate(s) whose definitive Number(s) in the Schedule hereto are set out in the Table overleaf, or attached overleaf, hereby bind Ourselves, each for his own part and not one for Another, our Heirs, Executors, and Administrators, and in respect of his due proportion only, to pay or make good to the Assured or the Assured's Executors, Administrators, and Assigns, or to indemnify him or them against all such Loss, Damage or Liability as aforesaid (subject to the conditions herein expressed) not exceeding the Sum of One Million, Eighty-Seven Thousand,

Three Hundred and Thirty-Five, United States Dollars.

payment to be made within Seven Days after such Loss, Damage or Liability is proved, and so that the due proportion for which each of Us the Underwriters is liable shall be ascertained by reference to his proportion as ascertained according to the said Schedule of the Amount, Percentage or Proportion of the total Sum Assured which is in the said Table set opposite the definitive Number of the Syndicate of which such Underwriter is a Member.

IN WITNESS whereof the Manager of Lloyd's Policy Signing Office has subscribed his Name on behalf of each of Us.

LLOYD'S POLICY SIGNING OFFICE

MANAGER.

Dated in London, the Seventeenth
Day of May, One Thousand Nine Hundred
and Fifty-Nine.

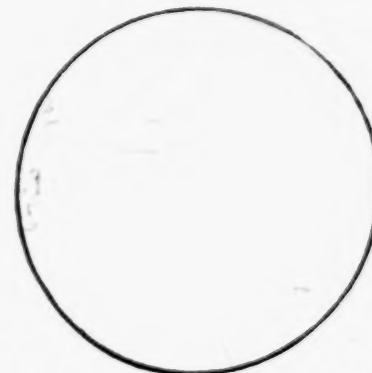



EXHIBIT "B" TO STIPULATION OF FACTS—3a

(Page 2)


(See opposite) 

**Definitive Numbers of Syndicates and Amount, Percentage or Proportion of the Total Sum
Assured shared between the Members of those Syndicates.**

AMOUNT, PERCENTAGE OR PROPORTION	BROKER'S NO	L.P.S.O. SLIP NO	L.P.S.O. DATE	AMOUNT, PERCENTAGE OR PROPORTION	BROKER'S NO	L.P.S.O. SLIP NO	L.P.S.O. DATE
PER CENT	509	5310114	8591		509	5310114	8591
	SYNDICATE	UNDERWRITER'S REFERENCE			SYNDICATE	UNDERWRITER'S REFERENCE	
6.749	933	13 5		.307	203	25 5	5052
6.135	17	13Y59	6/4/97	.613	590	25 5	59
6.135	334	PIERS	13 5 59	1.534	299	18 5	59C1694
6.135	448	14 5	59 HCA3	1.227	284	25 5	59
6.135	418	13 5	59PWD11	1.534	89	25 5	T/18
.613	421	13 5	59PWD11				
6.135	108	13 5					
.920	101	13 5					
3.681	185	8 0	63 15Y59				
.368	187	8 0	63 15Y59				
.552	28	0	63 15Y59				
2.070	632	PIER	15 5				
2.531	633	PIER	15 5				
5.215	720	T	15 5 9				
4.601	368	13 5					
1.840	31	657 T					
3.068	65	15Y59	A23407				
3.068	707	15 5	59				
.736	263	13Y59	1/4246				
2.761	450	13Y59	1/4246				
.552	902	13Y59	1/4246				
.552	999	13Y59	1/4246				
.613	158	13Y59	1/4246				
3.681	764	15 5	59PL PR				
1.304	213	25 5	5052				
.230	206	25 5	5052				

EXHIBIT "B" TO STIPULATION OF FACTS—3a


(Page 3)

(See opposite) 

[fols. 98, 99, 100, 101, 102, 103, 104]

EXHIBIT "B" TO STIPULATION OF FACTS—3a

(Page 4)


(See opposite) 

5. All losses incurred hereunder shall reduce the liability under this insurance to the extent of the amount of same, but in the event of any but a total loss under this insurance, the amount of said loss shall be reinstated subject to all the terms and conditions of this insurance, the Assured warranting to pay pro rata premium upon the amount so reinstated from the date of the loss.
6. It shall be optional with Underwriters to repair or replace the property lost or damaged with other of like kind and quality within a reasonable time on giving notice within fifteen (15) days after the Proof of Loss is submitted, of its intention to do so, but there can be no abandonment to Underwriters of the property described.
7. Underwriters shall not be liable for any loss, caused directly or indirectly by: (a) enemy attack by armed forces, including action taken by military, naval or air forces in resisting an actual or an immediately impending enemy attack; or (b) invasion, insurrection, rebellion, revolution, civil war, usurped power, or (c) seizure or destruction under Quarantine or Customs regulations confiscation by order of any Government or Public Authority, or risks of Contraband or Illegal Transportation or Trade.
8. In case the Assured and Underwriters shall fail to agree as to the amount of loss or damage, each shall, on the written demand of either, select a competent and disinterested appraiser. The appraisers shall then appraise the loss and damage, stating separately the loss or damage to each item, and failing to agree shall submit their differences to an umpire. Any award in writing, so itemized, of any two then filed with Underwriters shall determine the amount of the loss or damage. Each appraiser shall be paid by the party selecting him and the expense of appraisal and umpire shall be paid by the parties equally.
9. In all cases of loss the Assured shall, at the request of Underwriters or their Agents, assign and subrogate all their rights and claims against others to Underwriters at time of payment to an amount not exceeding the sum paid by Underwriters and permits suit to be brought in the Assured's name but at Underwriters' expense, and the Assured further agrees to render all reasonable assistance in the

- In case the Assured and Underwriters shall fail to agree on the amount of loss or damage, each shall, on the written demand of either, select a competent and disinterested appraiser. The appraisers shall then appraise the loss and damage, stating separately the loss or damage to each item, and failing to agree shall submit their differences to an umpire. Any award in writing, so itemized, of any two then filed with Underwriters shall determine the amount of the loss or damage. Each appraiser shall be paid by the party selecting him and the expense of appraisal and umpire shall be paid by the parties equally.
9. In all cases of loss the Assured shall, at the request of Underwriters or their Agents, assign and subrogate all their rights and claims against others to Underwriters at time of payment to an amount not exceeding the sum paid by Underwriters and permits suit to be brought in the Assured's name but at Underwriters' expense, and the Assured further agrees to render all reasonable assistance in the prosecution of said suit or suits.
10. It is understood that this insurance excludes:
- (a) Loss or damage to Assured's ferry racks caused by or resulting from collision with Assured's ferryboat, ~~subsidence~~ and or collapse.
 - (b) Loss or damage to Assured's pile clusters at New Orleans, La., caused by or resulting from collision with Assured's ferryboat, subsidence and or collapse.
 - (c) Loss or damage to piers at the Assured's New Orleans Plant caused by or resulting from collapse due to the accumulation of silt or the removal of same.
11. It is understood that this insurance does not cover claims for any loss or damage to the interest insured which, in the absence of this policy, are recoverable under Hull policies carried by the Assured on the Ferryboat TODDCO.

EXHIBIT "B" TO STIPULATION OF FACTS—3a

(Page 5)

(See opposite) 

2-3-2-3

In all communications please quote the following reference	
509	59/BH 468/JY

FORM J (A)



Assured TODD SHIPYARDS CORPORATION etc.

Premium

Policy and Stamp

Date of Expiry 12.01 am. 16th May 1960
E.S.T.

**Tax Stamps required by the United
States Revenue Act of 1916 as amended
July 1, 1948, affixed to cover note
dated _____**

Assured TODD SHIPYARDS CORPORATION etc.

Premium


Policy and Stamp

Date of Expiry 12.01 am. 16th May 1960
E.S.T.

*The Assured is requested to read this Policy and,
if it is incorrect, return it immediately for alteration.*

In the event of any occurrence likely to
result in a claim under this Policy, immediate
notice should be given to:—

MARSH & McLENNAN
INSURANCE

EXHIBIT "B" TO STIPULATION OF FACTS—4**(Page 1)****(See opposite) **

The place of physical and actual issue and delivery of this policy is the City of London. Nevertheless (at the option of the Assured) as between the Assured and the Assurers the place of issue and delivery of the policy shall be considered the City of New York and all matters arising hereunder shall be determined in accordance with American law and practice. Any suit hereon may be brought against these Assurers in any Court of competent jurisdiction within the United States of America. The summons and other legal processes may be served on this Company by and in behalf of the Assured by mailing a copy thereof by United States registered mail addressed to Mr. Russell T. Mount, Mr. Wilbur H. Hecht or Mr. Frank A. Bull, all of the Law firm of Mendes & Mount, 27, William Street, New York 5, N.Y., each of whom this Company hereby authorizes to accept by and in its behalf such summons and other legal processes against this Company in any Court of competent jurisdiction within the United States of America. The mailing, as herein provided of such summons or other legal process shall be deemed personal service and accepted by this Company as such, and shall be legal and binding upon this Company for all the purposes of the suit. Final judgment against this Company in any such suit shall be conclusive; and it may be enforced in any other jurisdictions, including Great Britain, by suit on the judgment, a certified or exemplified copy of which shall be conclusive evidence of the fact and of the amount of this indebtedness. The right of the Assured to bring suit as provided herein shall be limited to a suit brought in its own name and for its own account. For the purposes of suit as herein provided the word "Assured" includes any mortgagee under a ship mortgage and any person succeeding to the rights of any such mortgagee.

The following clause to apply only if this Insurance is affected by the New York State Insurance Law :—

" Underwriters hereon hereby designate the Superintendent of Insurance of the State of New York or his successor in office their true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the (re) insured or any beneficiary hereunder arising out of this contract of (re) insurance."

Endorsement to be attached to and made part of Policy No. _____

of the _____

issued to TODD SHIPYARDS CORPORATION, etal

on the INDUSTRIAL WORK PROPERTY DAMAGE LIABILITY- INSURANCE

The insurance afforded by this policy is hereby extended to cover the liability of the Assured for the loss or damage to property of Encinal Terminals and/or property of others in the care, custody, or control of said Encinal Terminals while situated in and/or adjacent to Warehouse building #3 on the premises of the Assured's San Francisco Division in Alameda, California, subleased by the Assured to said Encinal Terminals, where such loss or damage results from the fault or negligence of the Assured, its agents, servants and/or employees.

All other terms and conditions of policy remaining unchanged.

Johnson & Higgins
Marine Department
63 Wall St., NY 5

ASSURED. TODD SHIPYARDS CORPORATION AND/OR AFFILIATED AND/OR ASSOCIATED
CORPORATIONS AND/OR COMPANIES. FOR ACCOUNT OF WHOM IT MAY CONCERN.

LOSS, IF ANY, PAYABLE TO TODD SHIPYARDS CORPORATION, OR ORDER

Attaching September 30, 1958, 12 01 AM Eastern Standard Time

Expiring September 30, 1959, 12 01 AM Eastern Standard Time.

1. \$1,000,000 being part of \$1,000,000. to cover the liability of the
assured as hereinafter mentioned for work being performed at the following
locations.

TODD SHIPYARDS CORPORATION (BROOKLYN DIVISION) Erie Basin Plant,
Brooklyn, N. Y.

TODD SHIPYARDS CORPORATION (HOBOKEN DIVISION) Hoboken, N. J.

TODD SHIPYARDS CORPORATION (GALVESTON DIVISION) Galveston, Texas

TODD SHIPYARDS CORPORATION (PRODUCTS DIVISION) Houston, Texas; and
Brooklyn, N. Y.

TODD SHIPYARDS CORPORATION (SAN FRANCISCO DIVISION) Alameda, California

TODD SHIPYARDS CORPORATION (LOS ANGELES DIVISION) San Pedro, California

TODD SHIPYARDS CORPORATION (NEW ORLEANS DIVISION) Lower and Upper
Plants, New Orleans, La.

TODD SHIPYARDS CORPORATION (SEATTLE DIVISION) Seattle, Washington

or elsewhere within the territorial limits of the United States

2. To cover the assured's legal or assumed liability for loss or damage
(including resultant loss of use) to property of others in its care,
custody or control for repair, alteration, fabrication, construction
and/or other work. Property of others shall be deemed to include
identified property or components thereof, which the assured's cus-
tomers have contracted to purchase, once such property or components
thereof have been committed to alteration, fabrication, and/or
construction and/or other work necessary for ultimate delivery to
the customer.


3. To cover the assured's legal or assumed liability for loss or damage

customers have contracted to purchase, once such property or components thereof have been committed to alteration, fabrication, and/or construction and/or other work necessary for ultimate delivery to the customer.

3. To cover the assured's legal or assumed liability for loss or damage (including loss of use) to property of others not described in Clause 2 hereof caused by or arising out of performance of the work described in said Clause 2, whether or not the work concerns property of others in their care, custody or control.
4. To cover loss or damage to property of the assured (excluding tools and similar equipment) used or in process of use in the repair, alteration, fabrication, construction and/or other work described in Clause 2 hereof.
5. To cover the assured's legal or assumed liability for defective workmanship or materials incorporated in the work covered by Clause 2 hereof.
6. This policy shall not be reduced by any loss, paid or unpaid and is always open to apply in and for payment of claims in the full amount of its proportion of \$1,000,000 in respect of each and every claim coming within its terms, plus legal expenses and costs as herein provided.
7. Liability under this policy arising out of the same accident or occurrence shall be for the excess of \$2,500 of the total claims arising out of the same accident or occurrence.
8. It is understood and agreed that the aforesaid coverage shall not apply to loss, damage, defective workmanship or material occurring or discovered beyond 180 days from the date of delivery to the assured's customer.

EXHIBIT "B" TO STIPULATION OF FACTS—4

(Page 2)

(See opposite) 

76/89514

6.3830% Edinburgh Assurance Co.Ltd.,
2.9786% Cornhill Insurance Co.Ltd.,
1.2766% Merchants Marine Insurance Co.Ltd.,
6.3830% Orion Insurance Co.Ltd., "T" a/c
6.3830% Fine Art General Insurance Co.Ltd.,/National
Provincial Insurance Co.Ltd.,
2.5531% British Fire Insurance Co.Ltd.,
2.1277% Edinburgh Assurance Co.Ltd., No; 2 a/c
71.9150% LLOYD'S UNDERWRITERS
100.000%
=====

during the period commencing with the 12.01am. 30th day of September, 1958
and ending with the 12.01am. 30th day of September, 1959 both days inclusive.
beginning and ending with EASTERN STANDARD TIME

If the Assured shall make any claim knowing the same to be false or fraudulent, as regards amount or otherwise, this Policy shall become void, and all claim thereunder shall be forfeited.

NOW KNOW YE, that We the Underwriters hereby bind Ourselves, each for his own part and not one for Another, our Heirs, Executors, and Administrators, and in respect of his due proportion only, to pay or make good to the Assured or the Assured's Executors, Administrators, and Assigns, or to indemnify him or them against all such Loss, Damage or Liability as aforesaid (subject to the conditions herein expressed) not exceeding the Sum of

as above

payment to be made within Seven Days after such Loss, Damage or Liability is proved, and so that the due proportion for which each of Us the Underwriters is liable shall be ascertained by reference to his proportion as ascertained according to the Amount, Percentage or Proportion of the total Sum assured.

IN WITNESS whereof the Underwriters have subscribed their Names as hereinafter appears.

Dated in London, the 19th

Day of November,

One Thousand Nine Hundred and FIFTY EIGHT

9. It is further understood and agreed that the aforesaid coverage shall not apply to loss, damage, defective workmanship or material involving vessels undergoing repair, alteration, conversion or construction by the assured, nor to loss or damage to other property of any nature arising out of or resulting from such vessel repair, alteration, conversion or construction work.
10. The assured shall be directly liable to the assurer for all premiums under this policy. If payment of premium is not made by the assured within 10 days after attachment of the insurance, or, in the event the assurers shall have agreed to accept deferred payments, if any payment of premium is not made on the day agreed, this policy may be cancelled by the assurer giving to the assured named herein five days' notice of such cancellation. A written and/or telegraphic notice by or through the brokers, or their American Correspondents, who negotiated the insurance, to said assured at his last known address shall constitute a complete notice as required under this clause. Such cancellation shall be without prejudice to premiums earned and due for the period the policy is in force.
11. Insolvency or bankruptcy of the assured shall not act to debar recovery hereunder and these assurers agree that in the event of the inability of the assured to pay liability arising from perils insured against hereunder, to pay such claim or part thereof for which this policy may be liable.
12. And it is further agreed that in cases where the liability of the assured as aforesaid is investigated and/or contested with the consent of these assurers, this policy shall be liable for and will also pay in full without any deductions, costs and expenses paid and incurred in investigating, contesting or settling liability.
13. The Underwriters to be paid in consideration of this insurance _____ Dollars, being at premium of \$25,000.00.

such cancellation. A written and/or telegraphic notice by or through the brokers, or their American Correspondents, who negotiated the insurance, to said assured at his last known address shall constitute a complete notice as required under this clause. Such cancellation shall be without prejudice to premiums earned and due for the period the policy is in force.

11. Insolvency or bankruptcy of the assured shall not act to debar recovery hereunder and these assurers agree that in the event of the inability of the assured to pay liability arising from perils insured against hereunder, to pay such claim or part thereof for which this policy may be liable.
12. And it is further agreed that in cases where the liability of the assured as aforesaid is investigated and/or contested with the consent of these assurers, this policy shall be liable for and will also pay in full without any deductions, costs and expenses paid and incurred in investigating, contesting or settling liability.
13. The Underwriters to be paid in consideration of this insurance _____ Dollars, being at present _____ of \$25,000.00.

The terms and conditions of this form are to be regarded as substituted for those of the policy to which this form is attached, the latter being hereby waived.

Johnson & Higgins
Marine Department
63 Wall St., NY 5

EXHIBIT "B" TO STIPULATION OF FACTS—4

(Page 3)

(See opposite) 

J (A)

PRO FORMA

Whereas MILLIS, FISHER & DUMAS LTD.,
for account of whom it may concern
of LONDON

(hereinafter called "the Assured"), have paid Premium of US. \$25,000 in
Premium or Consideration to Us, who have hereunto subscribed our Names to Insure against Loss ^{full}
follows:—

100 per cent of
US. \$1,000,000

This insurance is to cover the Legal or Assumed Liability
of Todd Shipyards Corporation and/or Affiliated and/or
Associated Corporations and/or Companies as per form
attached.

Subject to the conditions of the attached clauses.

Insured with:—

No. 576/89514

6.3830% Edinburgh Assurance Co.Ltd.,
2.9786% Cornhill Insurance Co.Ltd.,
1.2766% Merchants Marine Insurance Co.Ltd.,
6.3830% Orion Insurance Co.Ltd., "T" a/c
6.3830% Fine Art & General Insurance Co.Ltd.,/National
Provincial Insurance Co.Ltd.,
2.5531% British Fire Insurance Co.Ltd.,
2.1277% Edinburgh Assurance Co.Ltd., No; 2 a/c
71.9150% LLOYD'S UNDERWRITERS

100.000%
=====

during the period commencing with the 12.01am. 30th day of September, 1958
and ending with the 12.01am. 30th day of September, 1959 both days inclusive.
beginning and ending with EASTERN STANDARD TIME

If the Assured shall make any claim knowing the same to be false or fraudulent, as regards amount or otherwise, this Policy
shall become void, and all claim thereunder shall be forfeited.

NOW KNOW YE, that We the Underwriters hereby bind Ourselves, each for his own part and not one for Another, our Heirs,
Executors, and Administrators, and in respect of his due proportion, to the payment of the sum insured.

(b) \$1,000,000.00
PROPERTY DAMAGE

\$1,000,000.00

\$1,000,000.00

ultimate net loss in respect of each accident but not exceeding

ultimate net loss in the aggregate in any one policy year in respect of each hazard insured with an aggregate limit under the underlying policy/ies.

DEFINITIONS

1. ACCIDENT. The word "accident" shall be understood to mean an accident or series of accidents arising out of one event or occurrence.

2. ULTIMATE NET LOSS. The words "ultimate net loss" shall be understood to mean the sums paid in settlement of losses for which the Assured is liable after making deductions for all recoveries, salvages and other insurances (other than recoveries under the policy/ies of the Primary Insurers), whether recoverable or not, and shall exclude all expenses and "Costs."

3. COSTS. The word "Costs" shall be understood to mean interest on judgment, investigation, adjustment and legal expenses (excluding, however, all expenses for salaried employees and retained counsel of and all office expenses of the Assured).

4. POLICY YEAR. The words "policy year" shall be understood to mean a period of one calendar year commencing each year on the day and hour first named above.

CONDITIONS

1. PAYMENT OF COSTS. "Costs" incurred by the Assured personally with the written consent of the Underwriters, and for which the Assured is not covered by the said Primary Insurers, shall be apportioned as follows:—

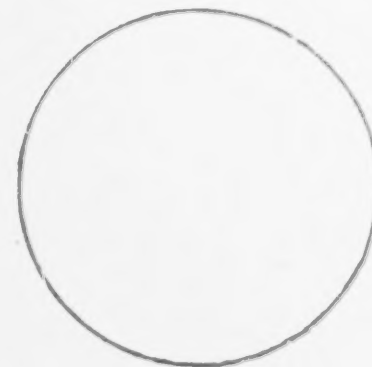
- (a) In the event of claim or claims arising which appear likely to exceed the Primary Limit or Limits, no "Costs" shall be incurred by the Assured without the written consent of the Underwriters.
- (b) Should such claim or claim become adjustable previous to going into court for not more than the Primary Limit or Limits, then no "Costs" shall be payable by the Underwriters.
- (c) Should, however, the sum for which the said claim or claims may be so adjustable exceed the Primary Limit or Limits, then the Underwriters, if they consent to the proceedings continuing, shall contribute to the "Costs" incurred by the Assured in the ratio that their proportion of the ultimate net loss as finally adjusted bears to the whole amount of such ultimate net loss.
- (d) In the event that the Assured elects not to appeal a judgment in excess of the Primary Limit or Limits the Underwriters may elect to conduct such appeal at their own cost and expense and shall be liable for the taxable court costs and interest incidental thereto, but in no event shall the total liability of the Underwriters exceed their limit or limits of liability as stated above, plus the expenses of such appeal.

2. APPLICATION OF SALVAGE. All salvages, recoveries or payments recovered or received subsequent to a loss settlement under this Policy shall be applied as if recovered or received prior to such settlement and all necessary adjustments shall then be made between the Assured and the Underwriters, provided always that nothing in this Policy shall be construed to mean that losses under this Policy are not recoverable until the Assured's ultimate net loss has been finally ascertained.

3. ATTACHMENT OF LIABILITY. Liability under this Policy shall not attach unless and until the Primary Insurers shall have admitted liability for the Primary Limit or Limits, or unless and until the Assured has by final judgment been adjudged to pay a sum which exceeds such Primary Limit or Limits.

4. MAINTENANCE OF PRIMARY INSURANCE. This Policy is subject to the same warranties, terms and conditions (except as regards the premium, the obligation to investigate and defend, the amount and limits of liability and the renewal agreement, if any, and except as otherwise provided herein) as are contained in or as may be added to the policy/ies of the Primary Insurers prior to the happening of an accident for which claim is made hereunder and should any alteration be made in the premium for the policy/ies of the Primary Insurers during the currency of this Policy, then the premium hereon shall be adjusted accordingly.


It is a condition of this Policy that the policy/ies of the Primary Insurers shall be maintained in full effect during the currency of this Policy except for any reduction of the aggregate limits contained therein solely by payment of claims in respect of accidents occurring during the policy year.



PP19

EXHIBIT "B" TO STIPULATION OF FACTS—4

(Page 4)

(See opposite) 

RECEIVED AS OF THE 10th DAY
NOVEMBER 1944
U.S. AIR FORCE

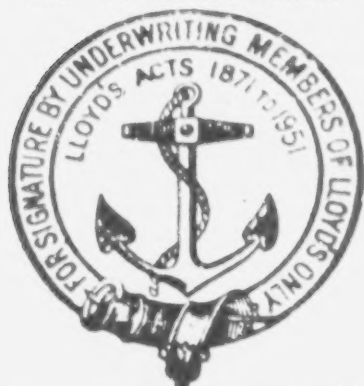
EXHIBIT "B" TO STIPULATION OF FACTS—5a

(Page 1)

(See opposite) 

T.P. 9
(U.S.A. AND CANADA)

Form approved by Lloyd's
Underwriters' Fire and
Non-Marine Association



Any person not an Underwriting
Member of Lloyd's subscribing this
Policy, or any person uttering the same
if so subscribed, will be liable to be
proceeded against under Lloyd's Acts

Printed at Lloyd's, London, England

No 59 137084.

No Policy or other Contract dated on or after 1st Jan., 1959, will be recognised by the Committee of Lloyd's
as entitling the holder to the benefit of the Funds and/or guarantees lodged by the Underwriters of the Policy
or Contract as security for their liabilities unless it bears at foot the Seal of Lloyd's Policy Signing Office

LLOYD'S EXCESS PUBLIC LIABILITY, PROPERTY DAMAGE AND PRODUCTS LIABILITY POLICY

(DIRECT INSURANCE)

(Subscribed only by Underwriting Members of Lloyd's all of whom have complied with the
requirements of the Assurance Companies Acts 1909 and 1946 as to security and otherwise.)



Whereas

TODD SHIPYARDS CORPORATION

of 1, Broadway, New York City, New York
(hereinafter called "the Assured") has paid \$ - 3,720.15 part of U.S.\$4,500.00 Minimum and
Premium or Consideration to the Underwriting Members of Lloyd's who have hereunto Deposit
subscribed their Names,

We the Underwriters hereby agree, subject to the terms, conditions and limitations hereinafter mentioned, to indemnify the Assured in
respect of accidents occurring during the period commencing 1st May 1959 Noon, and ending
1st May 1960 Noon, Local Standard Time for any and all sums which the Assured shall by law become liable to pay and shall
pay or by final judgment be adjudged to pay to any person or persons (excepting employees of the Assured injured during the course of their
employment) as damages

(a) for bodily injuries, including death at any time resulting therefrom caused by accident, hereinafter referred to as "Bodily Injury",
and

(b) for damage to or destruction of property of others (excluding property under the Assured's care, custody or control) caused by accident,
hereinafter referred to as "Property Damage",

arising out of the hazards covered by and as defined in the underlying policy/ies specified in the Schedule herein and issued by the
Travelers Insurance Company hereinafter called the "Primary Insurers",

Provided always that it is expressly agreed that liability shall attach to the Underwriters only after the Primary Insurers have paid or
have been held liable to pay the full amount of their respective ultimate net loss liability as follows:—

(a) **BODILY INJURY**

\$ 25,000.00

ultimate net loss in respect of each person and, subject to that same limit each person,

\$ 25,000.00

ultimate net loss in respect of each accident but, as regards Products Liability,

\$ 100,000.00

ultimate net loss in the aggregate in any one policy year; and

(b) **PROPERTY DAMAGE**

\$ 25,000.00

ultimate net loss in respect of each accident,

\$ 100,000.00

ultimate net loss in the aggregate in any one policy year in respect of each hazard insured with an aggregate
limit.

(all hereinafter referred to as the "Primary Limit or Limits");

and the Underwriters shall then be liable to pay only such additional amounts as will provide the Assured with a total coverage under the policy/ies
of the Primary Insurers and this Policy combined of

(a) **BODILY INJURY**

\$ 300,000.00

ultimate net loss in respect of each person and, subject to that same limit each person,

\$1,000,000.00

ultimate net loss in respect of each accident but, as regards Products Liability, not exceeding

\$1,000,000.00

ultimate net loss in the aggregate in any one policy year; and

(b) **PROPERTY DAMAGE**

\$1,000,000.00

ultimate net loss in respect of each accident but not exceeding

\$ 100,000.00

ultimate net loss in the aggregate in any one policy year in respect of each hazard insured, with an aggregate limit;

(all hereinafter referred to as the "Primary Limit or Limits");

and the Underwriters shall then be liable to pay only such additional amounts as will provide the Assured with a total coverage under the policy/ies of the Primary Insurers and this Policy combined of

(a) BODILY INJURY

\$ 300,000.00

ultimate net loss in respect of each person and, subject to that same limit each person,

\$1,000,000.00

ultimate net loss in respect of each accident but, as regards Products Liability, not exceeding

\$1,000,000.00

ultimate net loss in the aggregate in any one policy year; and

(b) PROPERTY DAMAGE

\$1,000,000.00

ultimate net loss in respect of each accident but not exceeding

\$1,000,000.00

ultimate net loss in the aggregate in any one policy year in respect of each hazard insured with an aggregate limit under the underlying policy/ies.

DEFINITIONS

1. ACCIDENT. The word "accident" shall be understood to mean an accident or series of accidents arising out of one event or occurrence.

2. ULTIMATE NET LOSS. The words "ultimate net loss" shall be understood to mean the sums paid in settlement of losses for which the Assured is liable after making deductions for all recoveries, salvages and other insurances (other than recoveries under the policy/ies of the Primary Insurers), whether recoverable or not, and shall exclude all expenses and "Costs."

3. COSTS. The word "Costs" shall be understood to mean interest on judgment, investigation, adjustment and legal expenses (excluding, however, all expenses for salaried employees and retained counsel of and all office expenses of the Assured).

4. POLICY YEAR. The words "policy year" shall be understood to mean a period of one calendar year commencing each year on the day and hour first named above.

CONDITIONS

1. PAYMENT OF COSTS. "Costs" incurred by the Assured personally with the written consent of the Underwriters, and for which the Assured is not covered by the said Primary Insurers, shall be apportioned as follows:—

- (a) In the event of claim or claims arising which appear likely to exceed the Primary Limit or Limits, no "Costs" shall be incurred by the Assured without the written consent of the Underwriters.
- (b) Should such claim or claim become adjustable previous to going into court for not more than the Primary Limit or Limits, then no "Costs" shall be payable by the Underwriters.
- (c) Should, however, the sum for which the said claim or claims may be so adjustable exceed the Primary Limit or Limits, then the Underwriters, if they consent to the proceedings continuing, shall contribute to the "Costs" incurred by the Assured in the ratio that their proportion of the ultimate net loss as finally adjusted bears to the whole amount of such ultimate net loss.
- (d) In the event that the Assured elects not to appeal a judgment in excess of the Primary Limit or Limits the Underwriters may elect to conduct such appeal at their own cost and expense and shall be liable for the taxable court costs and interest incidental thereto, but in no event shall the total liability of the Underwriters exceed their limit or limits of liability as stated above, plus the expenses of such appeal.

2. APPLICATION OF SALVAGE. All salvages, recoveries or payments recovered or received subsequent to a loss settlement under this Policy shall be applied as if recovered or received prior to such settlement and all necessary adjustments shall then be made between the Assured and the Underwriters, provided always that nothing in this Policy shall be construed to mean that losses under this Policy are not recoverable until the Assured's ultimate net loss has been finally ascertained.


3. ATTACHMENT OF LIABILITY. Liability under this Policy shall not attach unless and until the Primary Insurers shall have admitted liability for the Primary Limit or Limits, or unless and until the Assured has by final judgment been adjudged to pay a sum which exceeds such Primary Limit or Limits.

4. MAINTENANCE OF PRIMARY INSURANCE. This Policy is subject to the same warranties, terms and conditions (except as regards the premium, the obligation to investigate and defend, the amount and limits of liability and the renewal agreement, if any, and except as otherwise provided herein) as are contained in or as may be added to the policy/ies of the Primary Insurers prior to the happening of an accident for which claim is made hereunder and should any alteration be made in the premium for the policy/ies of the Primary Insurers during the currency of this Policy, then the premium hereon shall be adjusted accordingly.



EXHIBIT "B" TO STIPULATION OF FACTS—5a

(Page 2)

(See opposite) 

5. PREMIUM COMPUTATION: (delete clause not applicable).

- (a) The premium for this Policy represents ^{33 1/3} per cent. of the gross premium of the policy/ies of the Primary Insurers, subject to a minimum premium of \$ 4,500.00
- (b) The premium for this Policy is computed by applying to the gross premium of the policy/ies of the Primary Insurers a percentage calculated at _____ per cent. of the Manual Increase percentage in use by the Bureau Companies for ascertaining the difference in premium between
- (i) a policy with limits equal to the limits of the policy/ies of the Primary Insurers and
- (ii) a policy with limits equal to the limits of this Policy and of the policy/ies of the Primary Insurers combined, subject to a minimum premium of \$

6. CANCELLATION. This Policy may be cancelled at any time at the written request of the Assured or may be cancelled by or on behalf of the Underwriters provided ten days' notice in writing be given. If this Policy shall be cancelled by the Assured, the Underwriters shall retain the earned premium hereon for the period that this Policy has been in force or the short rate proportion, as set out overleaf, of the minimum premium whichever is the greater. If this Policy shall be cancelled by the Underwriters, they shall retain the earned premium hereon for the period that this Policy has been in force or *pro rata* of the minimum premium whichever is the greater. Notice of cancellation by the Underwriters shall be effective even though the Underwriters make no payment or tender of return premium.

7. NOTIFICATION OF CLAIMS. The Assured upon knowledge of any accident or occurrence likely to give rise to a claim hereunder shall give immediate written advice thereof to Hogg, Robinson & Capel-Cure (Canada) Ltd., Toronto.

8. FRAUDULENT CLAIMS. If the Assured shall make any claim knowing the same to be false or fraudulent, as regards amount or otherwise, this Policy shall become void and all claim hereunder shall be forfeited.

Now know Ye that We, the Underwriters, members of the Syndicate(s) whose definitive Number(s) in the attached list are set out in the Table below, or attached below, hereby bind Ourselves, each for his own part and not one for Another, our Heirs, Executors and Administrators, and in respect of his due proportion only, to indemnify the Assured or the Assured's Executors, Administrators and Assigns against Liability and Costs as specified herein (subject to the conditions herein expressed), payment to be made within Seven Days after such Liability is proved, and so that the due proportion for which each of Us the Underwriters is liable shall be ascertained by reference to his proportion as ascertained according to the said List of the Amount, Percentage or Proportion of the total Sum assured which is in the said Table set opposite the definitive Number of the Syndicate of which such Underwriter is a member.

In Witness whereof the Manager of Lloyd's Policy Signing Office has subscribed his Name on behalf of each of Us.

LLOYD'S POLICY SIGNING OFFICE,

MANAGER

Dated in London, the 30th June, 1959.

SCHEDULE

DB/KJ

The underlying policy/ies hereinbefore mentioned:—


See Schedule attached

**Definitive Numbers of Syndicates and Amount, Percentage or Proportion of the Total Sum
Assured shared between the Members of those Syndicates.**

AMOUNT, PERCENTAGE OR PROPORTION	BROKER'S NO	L.P.S.O. SLIP NO	L.P.S.O. DATE	AMOUNT, PERCENTAGE OR PROPORTION	BROKER'S NO	L.P.S.O. SLIP NO	L.P.S.O. DATE
PER CENT	542	63065	21 7 59 3		542	63065	21 7 59
	SYNDICATE	UNDERWRITER'S REFERENCE			SYNDICATE	UNDERWRITER'S REFERENCE	
9.90	933	6404L		1.98	438	17 4 59	
7.92	108	6 4 E					
1.90	101	6 4 E					
5.45	418	6 4 59 SRL					
4.95	448	6 4 59 LIAB					
4.95	368	6 4 23					
4.95	764	7 4 59 LL					
4.95	720	F 7 4 59					
4.95	621	LIAB A 552					
4.95	65	7 4 59					
2.48	380	16 4 59 TPL					
1.86	213	5054 16 4					
.59	206	5054 16 4					
.52	203	5054 16 4					
3.47	707	16 4 59					
1.48	733	16 4 59					
3.96	299	C29 7 4 59					
1.98	868	9 4 LIAB					
.50	502	9 4 LIAB					
1.98	165	RENL					
1.33	185	NM M/IC					
.15	187	NM M/IC					
1.34	632	16 4					
1.63	633	16 4					
1.48	274	16 4 59					
.99	315	9 4 59 01					

EXHIBIT "B" TO STIPULATION OF FACTS—5a

(Page 3)

(See opposite) 

ENDORSEMENT. No.3

This Endorsement is attached to, and forms part of, Lloyd's

Policy No. 59/137084.

in the name of **TODD SHIPYARDS CORPORATION.**

This Policy covers for 82.67 % of the liability more fully set forth herein and the percentages signed hereon are percentages of 100% of such liability.

ALL OTHER TERMS AND CONDITIONS REMAINING UNALTERED

London,

30th June, 1959.

NOTE.—This endorsement should be attached to the Policy to which it applies.

DR/K.I

ENDORSEMENT. No.2

This Endorsement is attached to, and forms part of, Lloyd's

Policy No. 59/137084.

in the name of TODD SHIPYARDS CORPORATION.

Notwithstanding anything contained herein to the contrary, it is hereby understood and agreed that with respect to Bodily Injury only the following amendments shall be deemed to be made to this Policy:-

- (A) The words "caused by accident" shall be deemed to be deleted from sub-paragraph (A) of the first part of the Insuring Clause.
- (B) The words "accident" or "accidents" wherever appearing herein shall be deemed to read "occurrence" or "occurrences" respectively.
- (C) Definition No.1 (Accident) shall be deemed not to apply to such Bodily Injury and the following definition shall apply thereto:
 - (5) "Occurrence". The word "Occurrence" shall be understood to mean any one occurrence or series of occurrences arising out of one event.

ALL OTHER TERMS AND CONDITIONS REMAINING UNALTERED.

London, 30th June, 195 9.

DB/KJ

NOTE.— This endorsement should be attached to the Policy to which it applies.

ENDORSEMENT. No.1

*This Endorsement is attached to, and forms part of, Lloyd's
Policy No. 59/137084.*

in the name of TODD SHIPYARDS CORPORATION.

It is hereby understood and agreed that this Policy only covers Excess Bodily Injury and Property Damage including Products and Completed Operations Liability, but excluding Products Claims or Suits brought outside the United States of America and the Dominion of Canada and Property Damage in respect of Ship Repair Operations arising in respect of the operations of the Assured, as more fully described in the Primary Policy/ies.

ALL OTHER TERMS AND CONDITIONS REMAINING UNALTERED.

London, 30th June, 1959.

DB/KJ

NOTE.— This endorsement should be attached to the Policy to which it applies.

S C H E D U L E

Primary Bodily Injury and Property Damage including Products and Completed Operations Liability but excluding Products Claims or suits brought outside the United States of America and the Dominion of Canada, and Property Damage in respect of Ship Repair Operations Policy or Policies issued to the Assured by the Travelers Insurance Company for limits of:-

BODILY INJURY:

- U.S.\$ 25,000.00 ultimate nett loss in respect of each person and, subject to the same limit each person
- U.S.\$ 25,000.00 ultimate nett loss in respect of each occurrence but, as regards Products Liability
- U.S.\$100,000.00 ultimate nett loss in the aggregate in any one Policy Year; and

PROPERTY DAMAGE:

- U.S.\$ 25,000.00 ultimate nett loss in respect of each accident
- U.S.\$100,000.00 ultimate nett loss in the aggregate in any one Policy Year in respect of each hazard insured with an aggregate limit.

(c) to the furnishing of services, materials, parts or equipment by an insured in connection with the planning, construction, maintenance, operation or use of any nuclear facility, (1) with respect to injury to or destruction of any nuclear facility or property thereat resulting from the nuclear energy hazard or (2) if the nuclear facility is located outside the United States of America, its territories or possessions, or Canada, with respect to injury, sickness, disease, death or destruction resulting from the nuclear energy hazard;

(d) to the transportation, handling, use, sale, distribution, or disposal of byproduct material, with respect to injury, sickness, disease, death or destruction resulting from the nuclear energy hazard.

As used herein:

1. The term "nuclear energy hazard" means the radioactive, toxic, explosive or other hazardous properties of source material, special nuclear material or byproduct material.

2. The terms "source material", "special nuclear material" and "byproduct material" shall have the meanings given them in the Atomic Energy Act of 1954 or by any law amendatory thereof; provided, except for byproduct material (a) contained in or combined with special nuclear material or (b) held, stored, transported or disposed of as waste by or on behalf of a nuclear facility, "byproduct material" shall not include any radioactive isotope away from a nuclear facility.

3. The term "nuclear facility" means:

(a) any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material;

(b) any equipment or device (i) designed or used for the separation of the isotopes of uranium or plutonium, (ii) designed or used for the processing, fabricating or alloying of special nuclear material or of irradiated materials containing special nuclear material, (iii) incorporating or making use of such irradiated materials, or (iv) designed or used for processing waste byproduct material;

(c) any structure, basin, excavation, premises or place prepared or used for the storage or disposal of waste source material or waste consisting of or containing special nuclear material or byproduct material;

and includes the site on which any of the foregoing is located, together with all operations conducted thereon and all premises used for such operations. Subdivision (ii) of paragraph (b) foregoing is not applicable to the occasional mechanical processing or fabricating of special nuclear material by any person or organization at a location which contains no equipment, device or apparatus otherwise defined herein as a nuclear facility, where special nuclear or byproduct material is not regularly handled, stored, or disposed of as waste, and which is principally used for other operations not related to the handling, fabricating or use of special nuclear material.

4. With respect to injury to or destruction of property, the word "injury" or "destruction" includes all forms of radioactive contamination of property.

EXHIBIT "B" TO STIPULATION OF FACTS—5a

(Page 4)

(See opposite) 

material, with respect to injury, sickness, disease, death or destruction resulting from the nuclear energy hazard.

As used herein:

1. The term "nuclear energy hazard" means the radioactive, toxic, explosive or other hazardous properties of source material, special nuclear material or byproduct material.

2. The terms "source material", "special nuclear material" and "byproduct material" shall have the meanings given them in the Atomic Energy Act of 1954 or by any law amendatory thereof; provided, except for byproduct material (a) contained in or combined with special nuclear material or (b) held, stored, transported or disposed of as waste by or on behalf of a nuclear facility, "byproduct material" shall not include any radioactive isotope away from a nuclear facility.

3. The term "nuclear facility" means:

(a) any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material;

(b) any equipment or device (i) designed or used for the separation of the isotopes of uranium or plutonium, (ii) designed or used for the processing, fabricating or alloying of special nuclear material or of irradiated materials containing special nuclear material, (iii) incorporating or making use of such irradiated materials, or (iv) designed or used for processing waste byproduct material;

(c) any structure, basin, excavation, premises or place prepared or used for the storage or disposal of waste source material or waste consisting of or containing special nuclear material or byproduct material;

and includes the site on which any of the foregoing is located, together with all operations conducted thereon and all premises used for such operations. Subdivision (ii) of paragraph (b) foregoing is not applicable to the occasional mechanical processing or fabricating of special nuclear material by any person or organization at a location which contains no equipment, device or apparatus otherwise defined herein as a nuclear facility, where special nuclear or byproduct material is not regularly handled, stored, or disposed of as waste, and which is principally used for other operations not related to the handling, fabricating or use of special nuclear material.

4. With respect to injury to or destruction of property, the word "injury" or "destruction" includes all forms of radioactive contamination of property.

It is understood and agreed that, except as specifically provided in the foregoing to the contrary, this clause is subject to the terms, exclusions, conditions and limitations of the Policy to which it is attached.

*Note:—As respects policies which afford liability coverages and other forms of coverage in addition, the words underlined should be amended to designate the liability coverages to which this clause is to apply.

U.S.A.

TAX CLAUSE.

(Approved by Lloyd's Underwriters' Fire and Non-Marine Association.)

It is understood and agreed that in the event of any return of premium becoming due hereunder the Underwriters will deduct from the amount of the return the same percentage as the allowance which they have made towards the Federal Stamp Tax.

Nevertheless where such return of premium becomes due owing to the cancellation hereof by Underwriters the above deduction of the tax allowance shall not be made except in so far as the Assured has a right to recover the tax from the U.S. Government.

Printed at Lloyd's, London, England.

15/11/56

N.M.A. 1056

U.S.A.

TAX PAID CLAUSE.

(Approved by Lloyd's Underwriters' Fire and Non-Marine Association.)

Notice is hereby given that the Underwriters have agreed to allow for the purpose of purchasing U.S. Government Stamps for attachment hereto **FOUR** per cent. of the premium payable hereon to the extent such premium is subject to Federal Stamp Tax.

Printed at Lloyd's, London, England.

15/11/58

N.M.A. 1057

CLAIM NOTIFICATION CLAUSE (U.S.A.)

(Approved by Lloyd's Underwriters' Fire and Non-Marine Association.)

The Assured upon knowledge of any occurrence likely to give rise to a claim hereunder shall give immediate advice thereof to the Underwriters through

Hogg, Robinson & Capel-Cure (Canada) Ltd., Toronto

~~XX~~

When Underwriters will appoint an Approved Adjuster
to assess the loss on behalf of Underwriters.

Printed at Lloyd's, London, England.

14/12/44

N.M.A. 358

(Approved by Lloyd's Underwriters' Fire and Non-Marine Association.)

It is agreed that in the event of the failure of Underwriters hereon to pay any amount claimed to be due hereunder, Underwriters hereon, at the request of the insured (or reinsured), will submit to the jurisdiction of any Court of competent jurisdiction within the United States and will comply with all requirements necessary to give such Court jurisdiction and all matters arising hereunder shall be determined in accordance with the law and practice of such Court.

It is further agreed that service of process in such suit may be made upon

**Messrs. Mendes & Mount, Attorneys,
27, William Street, New York 5, New York**

, and that in any suit instituted against any one of them upon this contract, Underwriters will abide by the final decision of such Court or of any Appellate Court in the event of an appeal.

The above-named are authorized and directed to accept service of process on behalf of Underwriters in any such suit and/or upon the request of the insured (or reinsured) to give a written undertaking to the insured (or reinsured) that they will enter a general appearance upon Underwriters' behalf in the event such a suit shall be instituted.

Further, pursuant to any statute of any state, territory or district of the United States which makes provision therefor, Underwriters hereon hereby designate the Superintendent, Commissioner or Director of Insurance or other officer specified for that purpose in the statute, or his successor or successors in office, as their true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the insured (or reinsured) or any beneficiary hereunder arising out of this contract of insurance (or reinsurance), and hereby designate the above-named as the person to whom the said officer is authorized to mail such process or a true copy thereof.

Printed at Lloyd's, London, England.

22/5/62

N.M.A. 772

U.S.A.

NUCLEAR INCIDENT EXCLUSION CLAUSE—LIABILITY—DIRECT (BROAD)

(Approved by Lloyd's Underwriters' Fire and Non-Marine Association.)

For attachment to insurances of the following classifications in the U.S.A., its Territories and Possessions, Puerto Rico and the Canal Zone:—

Owners, Landlords and Tenants Liability, Contractual Liability, Elevator Liability, Owners or Contractors (including railroad) Protective Liability, Manufacturers and Contractors Liability, Product Liability, Professional and Malpractice Liability, Storekeepers Liability, Garage Liability, Automobile Liability,

not being insurances of the classifications to which the Nuclear Incident Exclusion Clause—Liability—Direct (Limited) applies.

This policy*

does not apply:—

(a) to injury, sickness, disease, death or destruction with respect to which an insured under the policy is also an insured under a contract of nuclear energy liability insurance issued by the Nuclear Energy Liability Insurance Association or the Mutual Atomic Energy Liability Underwriters and in effect at the time of the occurrence resulting in such injury, sickness, disease, death or destruction; provided such contract of nuclear energy liability insurance shall be deemed to be in effect at the time of such occurrence notwithstanding such contract has terminated upon exhaustion of its limit of liability;


(b) to the ownership, maintenance, operation or use of a nuclear facility by or on behalf of an insured, with respect to injury, sickness, disease, death or destruction resulting from the nuclear energy hazard; provided that except for byproduct material, this paragraph (b) shall not apply to goods or products manufactured or handled by a nuclear facility owned, maintained, operated or used by or on behalf of an insured while such goods or products are away from such facility after sale or distribution to others;

(c) to the furnishing of services, materials, parts or equipment by an insured in connection with the planning, construction, maintenance, operation or use of any nuclear facility, (1) with respect to injury to or destruction of any nuclear facility or property thereat resulting from the nuclear energy hazard or (2) if the nuclear facility is located outside the United States of America, its territories or possessions, or Canada, with respect to injury, sickness, disease, death or destruction resulting from the nuclear energy hazard;

(d) to the transportation, handling, use, sale, distribution, or disposal of byproduct material, with respect to injury, sickness, disease, death or destruction resulting from the nuclear energy hazard.

EXHIBIT "B" TO STIPULATION OF FACTS—5a

(Page 5)

(See opposite) 

In all communications please quote
the following reference

542

59/13708+
HDR No.UL.112/32708

FORM T.P.9

(U.S.A. AND CANADA)

LLOYD'S



LONDON

**Excess Public Liability,
Property Damage and Products
Liability Policy
(Direct Insurance)**

Assured **YODL SHIPYARDS CORPORATION.**

Premium **U.S. \$3,720.15**

Policy and Stamp

Date of Expiry **1st May 1960 Noon,
Local Standard Time.**

*The Assured is requested to read this Policy and, if
it is incorrect, return it immediately for alteration.*

**In the event of any occurrence likely to
result in a claim under this Policy, immediate notice
should be given to:—**

SHORT RATE CANCELLATION TABLE

A. For Insurances written for one year:

Days Insurance in Force	Per cent. of One Year Premium	Days Insurance in Force	Per cent. of One Year Premium
1	5	154-156	53
2	6	157-160	54
3-4	7	161-164	55
5-6	8	165-167	56
7-8	9	168-171	57
9-10	10	172-175	58
11-12	11	176-178	59
13-14	12	179-182 (6 months)	60
15-16	13	183-187	61
17-18	14	188-191	62
19-20	15	192-196	63
21-22	16	197-200	64
23-25	17	201-205	65
26-29	18	206-209	66
30-32 (1 month)	19	210-214 (7 months)	67
33-36	20	215-218	68
37-40	21	219-223	69
41-43	22	224-228	70
44-47	23	229-232	71
48-51	24	233-237	72
52-54	25	238-241	73
55-58	26	242-246 (8 months)	74
59-62 (2 months)	27	247-250	75
63-65	28	251-255	76
66-69	29	256-260	77
70-73	30	261-264	78
74-76	31	265-269	79
77-80	32	270-273 (9 months)	80
81-83	33	274-278	81
84-87	34	279-282	82
88-91 (3 months)	35	283-287	83
92-94	36	288-291	84
95-98	37	292-296	85
99-102	38	297-301	86
103-105	39	302-305 (10 months)	87
106-109	40	306-310	88
110-113	41	311-314	89
114-116	42	315-319	90
117-120	43	320-323	91
121-124 (4 months)	44	324-328	92
125-127	45	329-332	93
128-131	46	333-337 (11 months)	94
132-135	47	338-342	95
136-138	48	343-346	96
139-142	49	347-351	97
143-146	50	352-355	98
147-149	51	356-360	99
150-153 (5 months)	52	361-365 (12 months)	100

B. For Insurances written for more or less than one year:—

1. If insurance has been in force for 12 months or less, apply the standard short rate table for annual insurances to the full annual premium determined as for an insurance written for a term of one year.
2. If insurance has been in force for more than 12 months:
 - a. Determine full annual premium as for an insurance written for a term of one year.
 - b. Deduct such premium from the full insurance premium, and on the remainder calculate the pro rata earned premium on the basis of the ratio of the length of time beyond one year the insurance has been in force to the length of time beyond one year for which the insurance was originally written.
 - c. Add premium produced in accordance with items (a) and (b) to obtain earned premium during full period insurance has been in force.

EXHIBIT "B" TO STIPULATION OF FACTS—6b

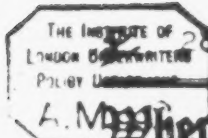
(Page 1)

(See opposite) 2



The Institute of London Underwriters.

Companies Combined Policy.



20.30% of the liability set forth in the attached wording

Whereas TODD SHIPYARDS CORPORATION
of One Broadway, New York City, New York

hereinafter called the Assured, have promised to pay forthwith a Premium or Consideration at the
US. \$566.00 part of US. \$2,000.00 Minimum & Deposit to Us, the Assurers,
A.M.C.C. against loss as follows, viz. :—

EXCESS BODILY INJURY AND PROPERTY DAMAGE INCLUDING PRODUCTS AND COMPLETED OPERATIONS
LIABILITY BUT EXCLUDING PRODUCTS CLAIMS OR SUITS BROUGHT OUTSIDE THE UNITED STATES
OF AMERICA AND THE DOMINION OF CANADA AND PROPERTY DAMAGE IN RESPECT OF SHIP
REPAIR OPERATIONS

This Insurance is subject to the provisions of the attached wording which is
incorporated in and forms part of this Policy

during the period commencing with the 1st day of May 1959, Noon
with the 1st day of May 1960, and ending
A.M.C.C. Local Standard Time

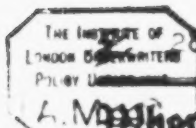
Wherever the word "Underwriters" appears herein it shall be read as "Assurers"

Now know ye that we the Assurers do hereby bind ourselves, each **Company** for itself only and
not one for another and in respect only of the due proportion of each Company, to pay to the Assured or the
Assured's Executors, Administrators and Assigns, all such loss as above stated that the Assured may
sustain during the aforesaid period, not exceeding in all the sum insured, as properly apportioned to the sums,
or to the percentages or proportions of the sum insured, subscribed against our names respectively.
If the Assured shall make any claim knowing the same to be false or fraudulent as regards amount or otherwise,
this Policy shall become void and all claim thereunder shall be forfeited.

IN WITNESS whereof we the said Assurers have subscribed our names and sums assured in London this
30th day of June 1959, and the Secretary of The Institute of London Underwriters
has subscribed his name on behalf of each of us.

The Institute of London Underwriters.

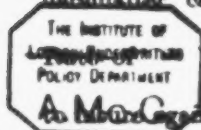
Companies Combined Policy.



20.50% of the liability set forth in the attached wording

Whereas TODD SHIPYARDS CORPORATION
of One Broadway, New York City, New York

hereinafter called the Assured, have promised to pay forthwith a Premium or Consideration at the



US.\$566.00 part of US.\$2,000.00 Minimum & Deposit

to Us, the Assurers,

to insure against loss as follows, viz.:-

EXCESS BODILY INJURY AND PROPERTY DAMAGE INCLUDING PRODUCTS AND COMPLETED OPERATIONS
LIABILITY BUT EXCLUDING PRODUCTS CLAIMS OR SUITS BROUGHT OUTSIDE THE UNITED STATES
OF AMERICA AND THE DOMINION OF CANADA AND PROPERTY DAMAGE IN RESPECT OF SHIP
REPAIR OPERATIONS

This Insurance is subject to the provisions of the attached wording which is
incorporated in and forms part of this policy

during the period commencing with the 1st day of May 1959, and ending
with the 1st day of May 1960, Noon and ending
Local Standard Time



Wherever the word "Underwriters" appears herein it shall be read as "Assurers"

Now know ye that we the Assurers do hereby bind ourselves, each Company for itself only and
not one for another and in respect only of the due proportion of each Company, to pay to the Assured or the
Assured's Executors, Administrators and Assigns, all such loss as above stated that the Assured may
sustain during the aforesaid period, not exceeding in all the sum insured, as properly apportioned to the sums,
or to the percentages or proportions of the sum insured, subscribed against our names respectively.
If the Assured shall make any claim knowing the same to be false or fraudulent as regards amount or otherwise,
this Policy shall become void and all claim thereunder shall be forfeited.

IN WITNESS whereof we the said Assurers have subscribed our names and sums assured in London this
30th day of June 1959, and the Secretary of The Institute of London Underwriters
has subscribed his name on behalf of each of us.



Wm. L. Day



MDD


Signed

Secretary,
The Institute of London Underwriters.

NOTE. This Policy must bear the seal of The Institute of London Underwriters Policy Department

EXHIBIT "B" TO STIPULATION OF FACTS—6b

(Page 2)

(See opposite) 

Amount, in full, of
the sum insured.

(company).

Reference.

4.71 ORION INSURANCE CO. LTD.

Talc

1500

6.4.59

4.71 ORION INSURANCE CO. LTD.

Talc

8000

ENGLISH & AMERICAN 3. CO. LTD. 50%

7.08 ECONOMIC INSURANCE LTD.

50%

A. A/O.

7.4.59

7.08 ANDREW WEIR INSURANCE CO., LTD.

17.4.59

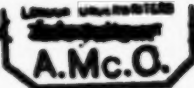
4.72 EDINBURGH ASSURANCE CO., LTD. No. 2 A/c.

A23296

(1)

ENDORSEMENT.

No.3.

This Endorsement is attached to, and forms part of  Institute of London Underwriters

Policy No. 59/137085

in the name of TODD SHIPYARDS CORPORATION

The premium for this Policy represents 50 per cent of the Gross Premium for the undermentioned limits of the Policy/ies of the Travelers Insurance Company; Commercial Insurance Company; and certain Underwriters at Lloyd's, London and certain British Companies, subject to a minimum premium of US.\$2,000.00.

BODILY INJURY

- US.\$275,000.00 ultimate nett loss in respect of each person and, subject to the same limit each person
- US.\$975,000.00 ultimate nett loss in respect of each occurrence, but as regards Products Liability
- US.\$900,000.00 ultimate nett loss in the aggregate in any one Policy Year; and

PROPERTY DAMAGE

- US.\$975,000.00 ultimate nett loss in respect of each accident
- US.\$900,000.00 ultimate nett loss in the aggregate in any one Policy Year in respect of each hazard insured with an aggregate limit.

Excess of:

BODILY INJURY

- US.\$ 25,000.00 ultimate nett loss in respect of each person and, subject to the same limit each person
- US.\$ 25,000.00 ultimate nett loss in respect of each occurrence but as regards Products Liability
- US.\$100,000.00 ultimate nett loss in the aggregate in any one Policy Year and

PROPERTY DAMAGE

- US.\$ 25,000.00 ultimate nett loss in respect of each accident
- US.\$100,000.00 ultimate nett loss in the aggregate in any one Policy Year in respect of each hazard insured with an aggregate limit.

ALL OTHER TERMS AND CONDITIONS REMAINING UNALTERED

30th June

9


London.

195

NOTE. — This endorsement should be attached to the Policy to which it applies.

EXHIBIT "B" TO STIPULATION OF FACTS—6b

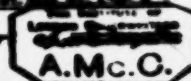
(Page 3)

(See opposite) 

This Endorsement is attached to, and forms part of

Policy No. 59/137085

in the name of TODD SHIPYARDS CORPORATION



Institute of London Underwriters

This Policy covers for ^{28.30} % of the liability more fully
set forth herein and the percentages signed hereon are
percentages of 100% of such liability.

ALL OTHER TERMS AND CONDITIONS REMAINING UNALTERED

London,

30th June

195⁹

NOTE.— This endorsement should be attached to the Policy to which it applies.



EXHIBIT "B" TO STIPULATION OF FACTS—6b

(Page 4)

(See opposite) 

It is hereby understood and agreed that the percentages signed by Underwriters are their proportions of the value shown herein.

No. 125.

M.N.Y. (3)

PAYMENT OF PREMIUMS.

Notwithstanding anything in the policy or binder or certificate of insurance to which this provision is attached or upon which it is printed, and notwithstanding any custom or usage to the contrary, it is hereby agreed by and between the assured and the assurer as follows:-

The assured shall be directly liable to the assurer for all premiums under this policy which premiums shall be due and payable in advance on the date fixed between the assured and Marsh & McLennan. If default be made in the payment of the whole or any part of said premiums when the same become due respectively, this policy may be cancelled by notice given by the assurer to the assured by or through Marsh & McLennan by registered letter or a telegram which requires delivery to be notified to the sender. The despatch of such a letter or telegram addressed to the last known place of business of the assured shall constitute complete and sufficient notice and said cancellation shall be effective at midnight New York Time, on the fifth day after despatch of same, provided the default has not in the meantime been made good. Said cancellation shall be without prejudice to claims for premiums earned and due for the period while the policy is in force.

Unless physically deleted by the Underwriters, the following warranty shall supersede and nullify any contrary provision of the policy:

P.3. S. CLAUSE

Notwithstanding anything to the contrary contained in the Policy, this insurance is warranted free from any claim for loss, damage or expense caused by or resulting from capture, seizure, arrest, restraint or detainment, or the consequences thereof or of any attempt thereat, or any taking of the Vessel by requisition or otherwise whether in time of peace or war and whether lawful or otherwise; also from all consequences of hostilities or warlike operations (whether there be a declaration of war or not), but the foregoing shall not exclude collision, explosion or contact with any fixed or floating object (other than a mine or torpedo), stranding, heavy weather or fire unless caused directly (and independently of the nature of the voyage or service which the Vessel concerned or, in the case of a collision, any other Vessel involved therein, is performing) by a hostile act by or against a belligerent power, and for the purpose of this warranty "power" includes any authority maintaining naval, military or air forces in association with a power; also warranted free, whether in time of peace or war, from all loss or damage caused by any weapon of war employing atomic fission or radioactive force. Further warranted free from the consequences of civil war, revolution, rebellion, insurrection, or civil strife arising therefrom or piracy.

If war risks are hereafter insured by endorsement on the Policy, such endorsement shall supersede the above warranty only to the extent that their terms are inconsistent and only while such war risk endorsement remains in force.

WARRANTED free from loss or damage caused by strikers, locked-out workmen, or persons taking part in labor disturbances or riots or civil commotions.

WARRANTED free of claim for loss, damage or expense in consequence of any prohibition, restriction or embargo of or by any Government or of any violation or attempted violation thereof.

In case of any Loss or Misfortune it shall be lawful for the Assured, their Factors, Servants and Assigns, to sue, labor and travel for, in and about the Defence, Safeguard and Recovery of the said ship &c., or any part thereof, without prejudice to this insurance; to the charges whereof the said Underwriters will contribute according to the Rate and Quantity of the sum herein insured. And it is specially declared and agreed that no acts of the Assured or Assured in recovering, saving or preserving the property insured shall be considered as a waiver or acceptance of abandonment.

TODD SHIPYARDS CORPORATION

	<u>Amount</u>	<u>Rate</u>
A - New Orleans Division	\$ 327,000.	1.875%
B - Galveston Division	605,600	1.50%
C - Products Division	<u>400,000</u>	1.875%
	\$1,332,600	
	=====	

Applying hereto:- *81.595% = \$1084,335-*

NEW YORK SUABLE CLAUSE.

The place of physical and actual issue and delivery of this policy is the City of London, but nevertheless as between the Assured and the Assurers the place of suit hereon shall be deemed the State of New York, United States of America and any suit hereon may be brought against this company in any Court of competent jurisdiction within the United States. The summons and other legal processes may be served on this company by and in behalf of the Assured by mailing a copy thereof by the United States registered mail addressed to Mr. Russel T. Mount, Mr. Wilbur H. Hecht, or Mr. Frank H. Bull, all of the law firm of Mendes & Mount, 27, William Street, New York City, New York, each of whom this company hereby authorises to accept by and in its behalf such summons and other legal processes against this Company in any Court of competent jurisdiction within the United States. The mailing as herein provided, of such summons or other legal processes shall be deemed personal service and accepted by this Company as such, and shall be legal and binding upon this Company for all the purposes of the suit. Final judgment against this Company in any such suit shall be conclusive; and it may be enforced in any other jurisdictions, including Great Britain, by suit on the judgment, a certified or exemplified copy of which shall be conclusive evidence of the fact and the amount of this indebtedness. The right of the Assured to bring suit as provided herein shall be limited to suit brought in its own name and for its own account. For the purposes of suit as herein provided, the word "Assured" includes any mortgagee under a ship mortgage and any persons succeeding to the rights of any such mortgagee.

The following clause shall apply, but only, if this insurance is affected by the New York Insurance Law.

SERVICE OF SUIT CLAUSE.

NEW YORK.

Underwriters hereon hereby designate the Superintendent of Insurance of the State of New York or his successor in office their true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the insured or any beneficiary hereunder arising out of this contract of insurance.

In the event of accident whereby loss or damage may result in a claim under this Policy, notice shall be given to the Underwriters, prior to survey, so that they may appoint their own Surveyor if they so desire; and whenever the extent of the damage is ascertainable, the majority (in amount) of the Underwriters may take or may require the Assured to take tenders for the repair of such damage.

No suit or action on this Policy for the recovery of any claim, shall be sustainable in any Court of law or equity unless the Assured shall have fully complied with all the terms and conditions of this Policy, nor unless commenced within twelve (12) months next after the happening of the loss, provided that where such limitation of time is prohibited by the laws of the State wherein this Policy is issued, then and in that event no suit or action under this Policy shall be sustainable unless commenced within the shortest limitation permitted under the laws of such State.

THIS POLICY MAY BE CANCELLED at any time upon written request of the Assured, the Underwriters retaining or collecting the customary short rates for the time it has been in force; or, it may be cancelled by the Underwriters by delivering or mailing to the Assured at the Assured's last known address five days' written notice of such cancellation and, if the premium has been paid, by tendering in cash, postal money order, or check, the pro rata un-earned premium thereon. From all return premiums the same percentage of deductions (if any) shall be made as was allowed by these Assurers on receipt of original premium.

It is a condition of this Policy that any broker, person, firm or corporation who shall procure this insurance to be taken by the Underwriters, shall be deemed to be exclusively the agent of the Assured in any and all notices, transactions and representations relating to this insurance or connected with or arising out of the same during its continuance.

TODD SHIPYARDS CORPORATION (NEW ORLEANS DIVISION) AND/OR TODD SHIPYARDS CORPORATION (GALVESTON DIVISION) AND/OR TODD SHIPYARDS CORPORATION (PRODUCTS DIVISION) AS INTEREST MAY APPEAR.

For account of themselves.

Loss, if any, payable to Todd Shipyards Corporation, or order.

(Hereinafter referred to as the Assured)

1. Covering the Wharves, Piers and Bulkheads, including piling foundations, buildings thereon, approaches, tracking, and parts thereof and everything belonging thereto, described and valued for all purposes of this insurance, as below:-

PROPERTY INSURED

Valuation and
Amount of Insurance

A. TODD SHIPYARDS CORPORATION (NEW ORLEANS DIVISION)

- i. Lower Plant - Hines Lane Wharf and Connecting
Pier Lower Wharf (just east of
Hines Lane Wharf)

\$300,000

27,000

\$ 327,000

B. TODD SHIPYARDS CORPORATION (GALVESTON DIVISION)

- I Pier "A" and Bulkhead \$100,000
II Pier "B" and Bulkhead 25,000
III Pier "C" and Bulkhead 250,000
IV Small Boat Pier, approximately 62' long
by 8' wide, extending from bulkhead on
East side of Pier E 4,300
V. Small Boat Pier, approximately 46' long
by 2' wide, extending from bulkhead on
East side of Pier E

1,300

\$ 605,600

\$ 605,600

C. TODD SHIPYARDS CORPORATION (PRODUCTS DIVISION)

I	Building ways located at the Wharf known as the Outfitting Wharf	\$200,000
II	Pier No.1 and Bulkhead (in damaged condition)	85,000
II	Pier No.2 and Bulkhead between Piers No.1 and No. 2	85,000
IV	"T" Head Pier	<u>30,000</u>

\$ 400,000

\$1,332,600

Applying hereto:- 81.595% = \$1,087,335

2. It is especially understood that this insurance is intended to indemnify the Assured for all loss, damage, and/or expense arising from perils insured to the actual replacement value of the property lost or damaged not exceeding the value for each item as provided herein but excluding wear, tear and gradual deterioration.

This insurance covers against the risks of collision, floods (meaning the rise of navigable waters, howsoever caused) subsidence and/or collapse; excluding, however, all loss or damage caused by or in consequence of fire, lightning, hurricane or tornado and any loss or damage resulting wholly and singularly from wear and tear or gradual deterioration.

It is hereby understood that no liability shall attach to these Underwriters for

- (a) the first \$1,500 of all collision claims hereunder, each accident, except items B.IV & V which shall be \$250.
- (b) the first \$250 of all other claims, each accident.
- (c) the first \$1,500 of all claims for launching damage in respect of building ways at outfitting Wharf (Item C.I. of Clause No.1)

ENDORSEMENT.

No.2.

This Endorsement is attached to, and forms part of ~~AMAL~~ Institute of London Underwriters
Policy No. 59/137085
in the name of TODD SHIPYARDS CORPORATION

Notwithstanding anything contained herein to the contrary it is hereby understood and agreed that with respect to Bodily Injury only the following amendments shall be deemed to be made to this Policy:

- (A) The words "caused by accident" shall be deemed to be deleted from sub-paragraph (A) of the first part of the Insuring Clause.
- (B) The words "Accident" or "Accidents" wherever appearing herein shall be deemed to read "Occurrence" or "Occurrences" respectively
- (C) Definition No.1 (Accident) shall be deemed not to apply to such Bodily Injury and the following definition shall apply thereto:
 - (5) "Occurrence". The word "Occurrence" shall be understood to mean any one occurrence or series of occurrences arising out of one event.

ALL OTHER TERMS AND CONDITIONS REMAINING UNALTERED.

London.

30th June


1959

MDD

NOTE -- This endorsement should be attached to the Policy to which it applies

EXHIBIT "B" TO STIPULATION OF FACTS—6b

(Page 5)

(See opposite) 

This Endorsement is attached to, and forms part of, the **A.M.C.O.** *Institute of London Underwriters*
59/137085
Policy No.

in the name of TODD SHIFYARDS CORPORATION

It is hereby understood and agreed that this Policy only covers
Excess Bodily Injury and Property Damage including Products and Completed
Operations Liability but excluding Property Damage in respect of Ship Repair
Operations arising in respect of the operations of the Assured, as more fully
described in the Primary Policy/ies.

ALL OTHER TERMS AND CONDITIONS REMAINING UNALTERED

London,

30th June 195 9

NOTE.— This endorsement should be attached to the Policy to which it applies.

SCHEDULE

Primary Bodily Injury, and Property Damage including Products and ~~other~~ **A.M.C.O.**
Operations Liability but excluding Products Claims and Suits brought outside
the United States of America, and the Dominion of Canada, and Property Damage
in respect of Ship Repair Operations Policy or Policies issued to the Assured
by the Travelers Insurance Company for limits of:

BODILY INJURY

- US.\$ 25,000.00 ultimate nett loss in respect of each person and,
subject to the same limit each person
- US.\$ 25,000.00 ultimate nett loss in respect of each occurrence but,
as regards Products Liability
- US.\$100,000.00 ultimate nett loss in the aggregate in any one Policy
Year; and

PROPERTY DAMAGE

- US.\$ 25,000.00 ultimate nett loss in respect of each accident
- US.\$100,000.00 ultimate nett loss in the aggregate in any one Policy
Year in respect of each hazard insured with an
aggregate limit,

and First Excess Policy No. 59/137034 or any renewal or replacement thereof issued
to the Assured by certain Underwriters at Lloyd's, London and certain British
Companies for limits of:

BODILY INJURY

- US.\$275,000.00 ultimate nett loss in respect of each person and,
subject to the same limit each person
- US.\$275,000.00 ultimate nett loss in respect of each occurrence but,
as regards Products Liability
- US.\$900,000.00 ultimate nett loss in the aggregate in any one Policy
Year; and

PROPERTY DAMAGE

US. \$ 25,000.00 ultimate nett loss in respect of each accident

US. \$100,000.00 ultimate nett loss in the aggregate in any one Policy Year in respect of each hazard insured with an aggregate limit,

and First Excess Policy No. 59/137034 or any renewal or replacement thereof issued to the Assured by certain Underwriters at Lloyd's, London and certain British Companies for limits of:

BODILY INJURY

US. \$275,000.00 ultimate nett loss in respect of each person and, subject to the same limit each person

US. \$275,000.00 ultimate nett loss in respect of each occurrence but, as regards Products Liability

US. \$900,000.00 ultimate nett loss in the aggregate in any one Policy Year; and

PROPERTY DAMAGE

US. \$275,000.00 ultimate nett loss in respect of each accident

US. \$900,000.00 ultimate nett loss in the aggregate in any one Policy Year in respect of each hazard insured with an aggregate limit

Primary Products Liability in respect of claims or suits brought outside the United States of America and the Dominion of Canada Policy or Policies issued to the Assured by the Commercial Insurance Company for limits of:-

BODILY INJURY

US. \$ 300,000.00 ultimate nett loss in respect of each person and, subject to the same limit each person.

US. \$1,000,000.00 ultimate nett loss in respect of each occurrence but, as regards Products Liability

US. \$1,000,000.00 ultimate nett loss in the aggregate in any one Policy Year; and

PROPERTY DAMAGE

US. \$1,000,000.00 ultimate nett loss in respect of each accident

US. \$1,000,000.00 ultimate nett loss in the aggregate in any one Policy Year in respect of each hazard insured with an aggregate limit

This Endorsement is attached to, and forms part of, ~~London~~ **A.M.C.O.** Institute of London Underwriters
Policy No. 59/137085

in the name of TODD SHIPYARDS CORPORATION

It is hereby understood and agreed that this Policy only covers
Excess Bodily Injury and Property Damage including Products and Completed
Operations Liability but excluding Property Damage in respect of Ship Repair
Operations arising in respect of the operations of the Assured, as more fully
described in the Primary Policy/ies.

ALL OTHER TERMS AND CONDITIONS REMAINING UNALTERED

London,

30th June 1959

NOTE.— This endorsement should be attached to the Policy to which it applies.

SCHEDULE

Primary Liability, and primarily Damage including Products and Operations Liability but excluding Products Claims and Suits brought outside the United States of America and the Dominion of Canada, and Property Damage in respect of Ship Repair Operations Policy or Policies issued to the Assured by the Travelers Insurance Company for limits of:

BODILY INJURY

- US.\$ 25,000.00 ultimate nett loss in respect of each person and, subject to the same limit each person
- US.\$ 25,000.00 ultimate nett loss in respect of each occurrence but, as regards Products Liability
- US.\$100,000.00 ultimate nett loss in the aggregate in any one Policy Year; and

PROPERTY DAMAGE

- US.\$ 25,000.00 ultimate nett loss in respect of each accident
- US.\$100,000.00 ultimate nett loss in the aggregate in any one Policy Year in respect of each hazard insured with an aggregate limit,

and First Excess Policy No. 59/137034 or any renewal or replacement thereof issued to the Assured by certain Underwriters at Lloyd's, London and certain British Companies for limits of:

BODILY INJURY

- US.\$25,000.00 ultimate nett loss in respect of each person and, subject to the same limit each person
- US.\$75,000.00 ultimate nett loss in respect of each occurrence but, as regards Products Liability
- US.\$900,000.00 ultimate nett loss in the aggregate in any one Policy Year; and

PROPERTY DAMAGE

US. \$ 25,000.00 ultimate nett loss in respect of each accident

US. \$100,000.00 ultimate nett loss in the aggregate in any one Policy Year in respect of each hazard insured with an aggregate limit,

and First Excess Policy No. 59/137034 or any renewal or replacement thereof issued to the Assured by certain Underwriters at Lloyd's, London and certain British Companies for limits of:

BODILY INJURY

US. \$275,000.00 ultimate nett loss in respect of each person and, subject to the same limit each person

US. \$275,000.00 ultimate nett loss in respect of each occurrence but, as regards Products Liability

US. \$900,000.00 ultimate nett loss in the aggregate in any one Policy Year; and

PROPERTY DAMAGE

US. \$275,000.00 ultimate nett loss in respect of each accident

US. \$900,000.00 ultimate nett loss in the aggregate in any one Policy Year in respect of each hazard insured with an aggregate limit

Primary Products Liability in respect of claims or suits brought outside the United States of America and the Dominion of Canada Policy or Policies issued to the Assured by the Commercial Insurance Company for limits of:-

BODILY INJURY

US. \$ 300,000.00 ultimate nett loss in respect of each person and, subject to the same limit each person.

US. \$1,000,000.00 ultimate nett loss in respect of each occurrence but, as regards Products Liability

US. \$1,000,000.00 ultimate nett loss in the aggregate in any one Policy Year; and


PROPERTY DAMAGE

US. \$1,000,000.00 ultimate nett loss in respect of each accident

US. \$1,000,000.00 ultimate nett loss in the aggregate in any one Policy Year in respect of each hazard insured with an aggregate limit

EXHIBIT "B" TO STIPULATION OF FACTS—6b

(Page 6)

(See opposite) 

U.S.A. AND CANADA.

Form approved by Lloyd's
Underwriters' Fire and
Non Marine Association.

A.Mc.O.

**EXCESS PUBLIC LIABILITY, PROPERTY DAMAGE
AND PRODUCTS LIABILITY**

(Direct Insurance)

(T.P.9.)

THIS INSURANCE, subject to the terms, conditions and limitations hereinafter mentioned, is to indemnify the Assured in respect of accidents occurring during the period commencing **1st May 1960 Noon** and ending **1st May 1960 Noon** for any and all sums which the Assured shall by law become liable to pay and shall pay or by final judgment be adjudged to pay to any person or persons (excepting employees of the Assured injured during the course of their employment) as damages

- (a) for bodily injuries, including death at any time resulting therefrom, caused by accident, hereinafter referred to as "Bodily Injury", and
- (b) for damage to or destruction of property of others (excluding property under the Assured's care, custody or control) caused by accident, hereinafter referred to as "Property Damage", arising out of the hazards covered by and as defined in the underlying policy/ies specified in the Schedule herein and issued by the **Travelers Insurance Company, Commercial Insurance Company and certain British Companies** hereinafter called the "Primary Insurers",

PROVIDED ALWAYS THAT it is expressly agreed that liability shall attach to the Underwriters only after the Primary Insurers have paid or have been held liable to pay the full amount of their respective ultimate net loss liability as follows:

(a) BODILY INJURY

- \$ 300,000.00** ultimate net loss in respect of each person and, subject to that same limit each person,
- \$1,000,000.00** ultimate net loss in respect of each accident but, as regards Products Liability,
- \$1,000,000.00** ultimate net loss in the aggregate in any one period of insurance; and

(b) PROPERTY DAMAGE

- \$1,000,000.00** ultimate net loss in respect of each accident,
- \$1,000,000.00** ultimate net loss in the aggregate in any one period of insurance in respect of each hazard insured with an aggregate limit;

(all hereinafter referred to as the "Primary Limit or Limits");

and the Underwriters shall then be liable to pay only such additional amounts as will provide the Assured with a total coverage under the policy/ies of the Primary Insurers and this Insurance combined of

(a) BODILY INJURY

- \$ 300,000.00** ultimate net loss in respect of each person and, subject to that same limit each person,
- \$2,000,000.00** ultimate net loss in respect of each accident but, as regards Products Liability, not exceeding
- \$2,000,000.00** ultimate net loss in the aggregate in any one period of insurance; and

(b) PROPERTY DAMAGE

- \$2,000,000.00** ultimate net loss in respect of each accident but not exceeding
- \$2,000,000.00** ultimate net loss in the aggregate in any one period of insurance in respect of each hazard insured with an aggregate limit under the underlying policy/ies.

(a) **BODILY INJURY**

\$ 300,000.00 ultimate net loss in respect of each person and, subject to that same limit each person,
\$1,000,000.00 ultimate net loss in respect of each accident but, as regards Products Liability,
\$1,000,000.00 ultimate net loss in the aggregate in any one period of insurance; and

(b) **PROPERTY DAMAGE**

\$1,000,000.00 ultimate net loss in respect of each accident,
\$1,000,000.00 ultimate net loss in the aggregate in any one period of insurance in respect of each
hazard insured with an aggregate limit;

(all hereinafter referred to as the "Primary Limit or Limits");

and the Underwriters shall then be liable to pay only such additional amounts as will provide the Assured with a total coverage under the policy/ies of the Primary Insurers and this Insurance combined of

(a) **BODILY INJURY**

\$ 300,000.00 ultimate net loss in respect of each person and, subject to that same limit each person,
\$2,000,000.00 ultimate net loss in respect of each accident but, as regards Products Liability, not
exceeding
\$2,000,000.00 ultimate net loss in the aggregate in any one period of insurance; and

(b) **PROPERTY DAMAGE**

\$2,000,000.00 ultimate net loss in respect of each accident but not exceeding
\$2,000,000.00 ultimate net loss in the aggregate in any one period of insurance in respect of each
hazard insured with an aggregate limit under the underlying policy/ies.

• **Local Standard Time**

DEFINITIONS

1. **ACCIDENT.**—The word "accident" shall be understood to mean an accident or series of accidents arising out of one event or occurrence.

2. **ULTIMATE NET LOSS.**—The words "ultimate net loss" shall be understood to mean the sums paid in settlement of losses for which the Assured is liable after making deductions for all recoveries, salvages and other insurances (other than recoveries under the policy/ies of the Primary Insurers), whether recoverable or not, and shall exclude all expenses and "Costs."

3. **COSTS.**—The word "Costs" shall be understood to mean interest on judgments, investigation, adjustment and legal expenses (excluding, however, all expenses for salaried employees and retained counsel of and all office expenses of the Assured).

4.—**PERIOD OF INSURANCE.**—The words "period of insurance" shall be understood to mean a period of one calendar year commencing each year on the day and hour first named above.


CONDITIONS

1. **PAYMENT OF COSTS.** "Costs" incurred by the Assured personally, with the written consent of the Underwriters, and for which the Assured is not covered by the said Primary Insurers, shall be apportioned as follows:—

- (a) In the event of claim or claims arising which appear likely to exceed the Primary Limit or Limits, no "Costs" shall be incurred by the Assured without the written consent of the Underwriters.
- (b) Should such claim or claims become adjustable previous to going into court for not more than the Primary Limit or Limits, then no "Costs" shall be payable by the Underwriters.
- (c) Should, however, the sum for which the said claim or claims may be so adjustable exceed the Primary Limit or Limits, then the Underwriters, if they consent to the proceedings continuing, shall contribute to the "Costs" incurred by the Assured in the ratio that their proportion of the ultimate net loss as finally adjusted bears to the whole amount of such ultimate net loss.

EXHIBIT "B" TO STIPULATION OF FACTS—6b

(Page 7)

(See opposite) 

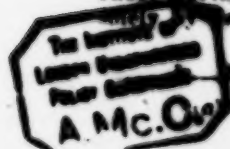
- (d) In the event that the Assured elects not to appeal a judgment in excess of the Primary Limit or Limits the Underwriters may elect to conduct such appeal at their own cost and expense and shall be liable for the taxable court costs and interest incidental thereto, but in no event shall the total liability of the Underwriters exceed their limit or limits of liability as stated above, plus the expenses of such appeal.

2. **APPLICATION OF SALVAGE.** All salvages, recoveries or payments recovered or received subsequent to a loss settlement under this Insurance shall be applied as if recovered or received prior to such settlement and all necessary adjustments shall then be made between the Assured and the Underwriters, provided always that nothing in this Insurance shall be construed to mean that losses under this Insurance are not recoverable until the Assured's ultimate net loss has been finally ascertained.

3. **ATTACHMENT OF LIABILITY.** Liability under this Insurance shall not attach unless and until the Primary Insurers shall have admitted liability for the Primary Limit or Limits, or unless and until the Assured has by final judgment been adjudged to pay a sum which exceeds such Primary Limit or Limits.

MAINTENANCE OF PRIMARY INSURANCE. This Insurance is subject to the same warranties, terms and conditions (except as regards the premium, the obligation to investigate and defend, the amount and limits of liability and the renewal agreement, if any, and except as otherwise provided herein) as are contained in or as may be added to the policy/ies of the Primary Insurers prior to the happening of an accident for which claim is made hereunder and should any alteration be made in the premium for the policy/ies of the Primary Insurers during the currency of this Insurance, then the premium hereon shall be adjusted accordingly.

It is a condition of this Insurance that the policy/ies of the Primary Insurers shall be maintained in full effect during the currency of this Insurance except for any reduction of the aggregate limits contained therein and payment of claims in respect of accidents occurring during the period of insurance.



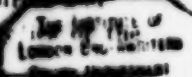
~~Insurance Commission which does not apply.~~

The premium for this Insurance represents _____ per cent. of the gross premium of the policy/ies of the Primary Insurers, subject to a minimum premium of \$ _____

- (b) The premium for this Insurance is computed by applying to the gross premium of the policy/ies of the Primary Insurers a percentage calculated at _____ per cent. of the Manual Increase percentage in use by the Bureau Companies for ascertaining the difference in premium between

(i) a policy with limits equal to the limits of the policy/ies of the Primary Insurers and

(ii) a policy with limits equal to the limits of this Insurance and of the policy/ies of the Primary Insurers combined, subject to a minimum premium of \$ _____



A.M.C.C.

~~Minimum Construction (delete clause not applicable).~~

The premium for this Insurance represents _____ per cent. of the gross premium of the policy/ies of the Primary Insurers, subject to a minimum premium of \$ _____

(b) The premium for this Insurance is computed by applying to the gross premium of the policy/ies of the Primary Insurers a percentage calculated at _____ per cent. of the Manual Increase percentage in use by the Bureau Companies for ascertaining the difference in premium between

(i) a policy with limits equal to the limits of the policy/ies of the Primary Insurers and

(ii) a policy with limits equal to the limits of this Insurance and of the policy/ies of the Primary Insurers combined, subject to a minimum premium of \$ _____

A.M.C.C.

6. CANCELLATION. This Insurance may be cancelled at any time at the written request of the Assured. If this Insurance shall be cancelled by the Assured, the Underwriters shall retain the earned premium hereon for the period that this Insurance has been in force or the short rate proportion, as set out below, of the minimum premium whichever is the greater. If this Insurance shall be cancelled by the Underwriters, they shall retain the earned premium hereon for the period that this Insurance has been in force or pro rata of the minimum premium whichever is the greater. Notice of cancellation by the Underwriters shall be effective even though the Underwriters make no payment or tender of return premium.

7. NOTIFICATION OF CLAIMS. The Assured upon knowledge of any accident or occurrence likely to give rise to a claim hereunder shall give immediate written advice thereof to **Hogg, Robinson & Carey**
Cure (Canada) Ltd. Toronto

8. FRAUDULENT CLAIMS. If the Assured shall make any claim knowing the same to be false or fraudulent, as regards amount or otherwise, this Insurance shall become void and all claim hereunder shall be forfeited.

SCHEDULE


The underlying policy/ies hereinbefore mentioned:

See Schedule attached

A.M.C.C.

EXHIBIT "B" TO STIPULATION OF FACTS—6b

(Page 8)

(See opposite) 

SHORT RATE CANCELLATION TABLE

A.M.C.O.


A. For Insurances written for one year:—

Days Insurance in Force	Per cent. of One Year Premium	Days Insurance in Force	Per cent. of One Year Premium
1	5	154-188	58
2	6	157-189	54
3-4	7	161-184	55
5-6	8	165-187	56
7-8	9	168-171	57
9-10	10	173-178	58
11-12	11	176-178	58
13-14	12	179-182	59
15-16	13	183-187	60
17-18	14	188-191	61
19-20	15	193-198	62
21-22	16	197-200	63
23-25	17	201-205	64
26-29	18	206-209	65
30-32	19	210-214	66
33-36	20	215-218	67
37-40	21	219-223	68
41-43	22	224-228	69
44-47	23	229-232	70
48-51	24	233-237	71
52-54	25	238-241	72
55-58	26	243-246	73
59-62	27	247-250	74
63-65	28	251-255	75
66-69	29	256-260	76
70-73	30	261-264	77
74-76	31	265-269	78
77-80	32	270-273	79
81-83	33	274-278	80
84-87	34	279-282	81
88-91	35	283-287	82
92-94	36	288-291	83
95-98	37	292-296	84
99-102	38	297-301	85
103-105	39	302-305	86
		(10 months).....	87

44-47	23	229-232	71
48-51	24	233-237	72
52-54	25	238-241	73
55-58	26	242-246	74
59-62 (2 months)	27	247-250	75
63-65	28	251-255	76
66-69	29	256-260	77
70-73	30	261-264	78
74-76	31	265-269	79
77-80	32	270-273	80
81-83	33	274-278	81
84-87	34	279-282	82
88-91 (3 months)	35	283-287	83
92-94	36	288-291	84
95-98	37	292-296	85
99-102	38	297-301	86
103-105	39	302-305	87
106-109	40	306-310	88
110-113	41	311-314	89
114-116	42	315-319	90
117-120	43	320-323	91
121-124 (4 months)	44	324-328	92
125-127	45	329-332	93
128-131	46	333-337	94
132-135	47	338-342	95
136-138	48	343-346	96
139-142	49	347-351	97
143-146	50	352-355	98
147-149	51	356-360	99
150-153 (5 months)	52	361-365	100
		(8 months)	
		(9 months)	
		(10 months)	
		(11 months)	
		(12 months)	

B. For Insurances written for more or less than one year:—

1. If insurance has been in force for 12 months or less, apply the standard short rate table for annual insurances to the full annual premium determined as for an insurance written for a term of one year.
2. If insurance has been in force for more than 12 months;
 - (a) Determine full annual premium as for an insurance written for a term of one year.
 - (b) Deduct such premium from the full insurance premium, and on the remainder calculate the *pro rata* earned premium on the basis of the ratio of the length of time beyond one year the insurance has been in force to the length of time beyond one year for which the insurance was originally written.
 - (c) Add premium produced in accordance with items (a) and (b) to obtain earned premium during full period insurance has been in force.

EXHIBIT "B" TO STIPULATION OF FACTS—6b**(Page 9)****(See opposite) **

SERVICE OF SUIT CLAUSE (U.S.A.)

(Approved by Lloyd's Underwriters' Fire and Non-Marine Association.)

It is agreed that in the event of the failure of Underwriters hereon to pay any amount claimed to be due hereunder, Underwriters hereon, at the request of the insured (or reinsured), will submit to the jurisdiction of any Court of competent jurisdiction within the United States and will comply with all requirements necessary to give such Court jurisdiction and all matters arising hereunder shall be determined in accordance with the law and practice of such Court.

It is further agreed that service of process in such suit may be made upon

Messrs. Mendes & Mount,

27 William Street, New York 5, New York

, and that in any suit instituted against any one of them upon this contract, Underwriters will abide by the final decision of such Court or of any Appellate Court in the event of an appeal.

The above-named are authorized and directed to accept service of process on behalf of Underwriters in any such suit and/or upon the request of the insured (or reinsured) to give a written undertaking to the insured (or reinsured) that they will enter a general appearance upon Underwriters' behalf in the event such a suit shall be instituted.

Further, pursuant to any statute of any state, territory or district of the United States which makes provision therefor, Underwriters hereon hereby designate the Superintendent, Commissioner or Director of Insurance or other officer specified for that purpose in the statute, or his successor or successors in office, as their true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the insured (or reinsured) or any beneficiary hereunder arising out of this contract of insurance (or reinsurance), and hereby designate the above-named as the person to whom the said officer is authorized to mail such process or a true copy thereof.

Printed at Lloyd's, London, England.

22/5/62

N.M.A. 772

U.S.A.

TAX CLAUSE.

(Approved by Lloyd's Underwriters' Fire and Non-Marine Association.)

It is understood and agreed that in the event of any return of premium becoming due hereunder the Underwriters will deduct from the amount of the return the same percentage as the allowance which they have made towards the Federal Stamp Tax.

Nevertheless where such return of premium becomes due owing to the cancellation hereof by Underwriters the above deduction of the tax allowance shall not be made except in so far as the Assured has a right to recover the tax from the U.S. Government.

Printed at Lloyd's, London, England.

15/11/88

N.M.A. 1086

U.S.A.

TAX PAID CLAUSE.

(Approved by Lloyd's Underwriters' Fire and Non-Marine Association.)

Notice is hereby given that the Underwriters have agreed to allow for the purpose of purchasing U.S. Government Stamps for attachment hereto **Four** per cent. of the premium payable hereon to the extent such premium is subject to Federal Stamp Tax.

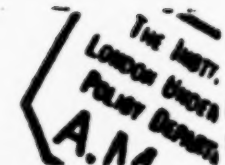
Printed at Lloyd's, London, England.

15/11/56

N.M.A. 1057

CLAIM NOTIFICATION CLAUSE (U.S.A.)

(Approved by Lloyd's Underwriters' Fire and Non-Marine Association.)



The Assured upon knowledge of any occurrence likely to give rise to a claim hereunder shall give immediate advice thereof to the Underwriters through

Hogg Robinson & Capel Cure (Canada) Ltd.,



~~which may be done by the Assured or by the Underwriters~~ when Underwriters will appoint an approved Adjuster

to assess the loss on behalf of Underwriters.

Printed at Lloyd's, London, England.

14/12/44

N.M.A. 358

U.S.A.

NUCLEAR INCIDENT EXCLUSION CLAUSE—LIABILITY—DIRECT (BROAD)

(Approved by Lloyd's Underwriters Fire and Non-Marine Association)

For attachment to insurances of the following classifications in the U.S.A., its Territories and Possessions, Puerto Rico and the Canal Zone:—

Owners, Landlords and Tenants Liability, Contractual Liability, Elevator Liability, Owners or Contractors (including railroad) Protective Liability, Manufacturers and Contractors Liability, Product Liability, Professional and Malpractice Liability, Storekeepers Liability, Garage Liability, Automobile Liability,

not being insurances of the classifications to which the Nuclear Incident Exclusion Clause—Liability—Direct (Limited) applies.

This policy*

does not apply:—

(a) to injury, sickness, disease, death or destruction with respect to which an insured under the policy is also an insured under a contract of nuclear energy liability insurance issued by the Nuclear Energy Liability Insurance Association or the Mutual Atomic Energy Liability Underwriters and in effect at the time of the occurrence resulting in such injury, sickness, disease, death or destruction; provided such contract of nuclear energy liability insurance shall be deemed to be in effect at the time of such occurrence notwithstanding such contract has terminated upon exhaustion of its limit of liability;

(b) to the ownership, maintenance, operation or use of a nuclear facility by or on behalf of an insured, with respect to injury, sickness, disease, death or destruction resulting from the nuclear energy hazard; provided that except for byproduct material, this paragraph (b) shall not apply to goods or products manufactured or handled by a nuclear facility owned, maintained, operated or used by or on behalf of an insured while such goods or products are away from such facility after sale or distribution to others;

(c) to the furnishing of services, materials, parts or equipment by an insured in connection with the planning, construction, maintenance, operation or use of any nuclear facility, (1) with respect to injury to or destruction of any nuclear facility or property thereof resulting from the nuclear energy hazard or (2) if the nuclear facility is located outside the United States of America, its territories or possessions, or Canada, with respect to injury, sickness, disease, death or destruction resulting from the nuclear energy hazard;

(d) to the transportation, handling, use, sale, distribution, or disposal of byproduct material, with respect to injury, sickness, disease, death or destruction resulting from the nuclear energy hazard.

As used herein:

1. The term "nuclear energy hazard" means the radioactive, toxic, explosive or other hazardous properties of source material, special nuclear material or byproduct material.

(b) to the ownership, maintenance, operation or use of a nuclear facility by or on behalf of an insured, with respect to injury, sickness, disease, death or destruction resulting from the nuclear energy hazard; provided that except for byproduct material, this paragraph (b) shall not apply to goods or products manufactured or handled by a nuclear facility owned, maintained, operated or used by or on behalf of an insured while such goods or products are away from such facility after sale or distribution to others;

(c) to the furnishing of services, materials, parts or equipment by an insured in connection with the planning, construction, maintenance, operation or use of any nuclear facility, (1) with respect to injury to or destruction of any nuclear facility or property thereof resulting from the nuclear energy hazard or (2) if the nuclear facility is located outside the United States of America, its territories or possessions, or Canada, with respect to injury, sickness, disease, death or destruction resulting from the nuclear energy hazard;

(d) to the transportation, handling, use, sale, distribution, or disposal of byproduct material, with respect to injury, sickness, disease, death or destruction resulting from the nuclear energy hazard.

As used herein:

1. The term "nuclear energy hazard" means the radioactive, toxic, explosive or other hazardous properties of source material, special nuclear material or byproduct material.

2. The terms "source material", "special nuclear material" and "byproduct material" shall have the meanings given them in the Atomic Energy Act of 1954 or by any law amendatory thereof; provided, except for byproduct material (a) contained in or combined with special nuclear material or (b) held, stored, transported or disposed of as waste by or on behalf of a nuclear facility, "byproduct material" shall not include any radioactive isotope away from a nuclear facility.

3. The term "nuclear facility" means:

(a) any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material;

(b) any equipment or device (i) designed or used for the separation of the isotopes of uranium or plutonium, (ii) designed or used for the processing, fabricating or alloying of special nuclear material or of irradiated materials containing special nuclear material, (iii) incorporating or making use of such irradiated materials, or (iv) designed or used for processing waste byproduct material;

(c) any structure, basin, excavation, premises or place prepared or used for the storage or disposal of waste source material or waste consisting of or containing special nuclear material or byproduct material;

and includes the site on which any of the foregoing is located, together with all operations conducted thereon and all premises used for such operations. Subdivision (ii) of paragraph (b) foregoing is not applicable to the occasional mechanical processing or fabricating of special nuclear material by any person or organization at a location which contains no equipment, device or apparatus otherwise defined herein as a nuclear facility, where special nuclear or byproduct material is not regularly handled, stored, or disposed of as waste, and which is principally used for other operations not related to the handling, fabricating or use of special nuclear material.

4. With respect to injury to or destruction of property, the word "injury" or "destruction" includes all forms of radioactive contamination of property.


It is understood and agreed that, except as specifically provided in the foregoing to the contrary, this clause is subject to the terms, exclusions, conditions and limitations of the Policy to which it is attached.

*Note:—As respects policies which afford liability coverages and other forms of coverage in addition, the words underlined should be amended to designate the liability coverages to which this clause is to apply.

[illegible]

EXHIBIT "B" TO STIPULATION OF FACTS—6b

(Page 10)

(See opposite) 

J (A) FORM

In all communications please quote
the following reference

542

59/137085

The Institute of London Underwriters
Companies Combined Policy




This Policy is subscribed by Insurance Companies
Members of The Institute of London Underwriters,
40, Lime Street,
London, E.C.3.

TODD SHIPYARDS CORPORATION

EXHIBIT "B" TO STIPULATION OF FACTS—7a

(Page 1)

(See opposite) 

No Policy or at Contract dated on or after 1st Jan., 1924, shall be recognized by the Committee of Lloyd's as entitling the holder to the benefit of the Funds and/or Guarantees lodged by the Underwriters of the Policy or Contract as security for their liabilities unless it bears at foot the Seal of Lloyd's Policy Signing Office.

53293 - 2 JAN 1959



Any person not an Underwriting Member of Lloyd's subscribing this Policy, or any person uttering the name if so subscribed, will be liable to be proceeded against under Lloyd's Acts.

S.G.



Be it known that

as well in their own Name as for and in the Name and Names of all and every other Person or Persons to whom the same doth, may or shall appertain, in part or in all, doth make Assurance and cause themselves and them and every of them to be insured, lost or not lost, at and from

upon any kind of Goods and Merchandises and also the Body, Tackle, Apparel, Ordnance, Munition, Artillery, Boat and other Furniture of and in the good Ship or Vessel called the

whereof is Master, under God, for this present Voyage or whosoever else shall go for Master in the said Ship or by whatsoever other Name or Names the same Ship, or the Master thereof, is or shall be named or called, beginning the Adventure upon the said Goods and Merchandises from the loading thereof aboard the said Ship as above and shall so continue and endure during her Abode there, upon the said Ship, &c.; and further, until the said Ship, with all her Ordnance, Tackle, Apparel, &c. and Goods and Merchandises whatsoever, shall be arrived at as above upon the said Ship, &c. until she hath moored at Anchor Twenty-four Hours in good Safety and upon the Goods and Merchandises until the same be there discharged and safely landed; and it shall be lawful for the said Ship, &c. in this Voyage to proceed and sail to and touch and stay at any Ports or Places whatsoever and whosoever for all purposes without Prejudice to this Insurance. The said Ship, &c., Goods and Merchandises, &c., for so much as concerns the Assured by Agreement between the Assured and the Assurers in this Policy, are and shall be valued at

WILL, MOUNTAIN HILL, and everything value at
U.S. \$500,000

subject to the conditions of the Institute Time Clause and Port
Clause and clauses attached.

Covering risks whilst the vessel is confined to Galveston Harbour,
whilst under repair, or held covered at a rate to be agreed.

£

Printed at Lloyd's, London, England.
19-4-58

WITH, WITHOUT OR WITHOUT, and everything
and all other things.....

value: at
U.S. \$200,000

Subject to the conditions of the Insured Time Clause, Bill-Port
Policies and all other conditions attached.

Covering risks whilst the vessel is confined to Galveston Harbour,
whilst under repair, or held covered at a rate to be agreed.

Touching the Adventures and Perils which we the Assurers are contented to bear and do take upon us in this Voyage, they are, of the Seas, Men-of-War, Fire, Enemies, Pirates, Rovers, Thieves, Jettisons, Letters of Mart and Countermart, Surprises, Takings at Sea, Arrests, Restraints and Detainments of all Kings, Princes and People, of what Nation, Condition or Quality soever, Barratry of the Master and Mariners and of all other Perils, Losses and Misfortunes that have or shall come to the Hurt, Detriment or Damage of the said Goods and Merchandises and Ship, &c. or any Part thereof; and in case of any Loss or Misfortune it shall be lawful to the Assured, their Factors, Servants and Assigns, to sue, labour and travel for, in and about the Defence, Safeguard and Recovery of the said Goods and Merchandises and Ship, &c. or any Part thereof without Prejudice to this Insurance; to the Charges whereof we, the Assurers, will contribute, each one according to the Rate and Quantity of his Sum herein assured. And it is especially declared and agreed that no acts of the Insurer or Insured in recovering, saving or preserving the property insured shall be considered as a waiver or acceptance of abandonment. And it is agreed by us, the Insurers, that this Writing or Policy of Assurance shall be of as much Force and Effect as the surest Writing or Policy of Assurance heretofore made in Lombard Street or in the Royal Exchange or elsewhere in London.

Warranted free of capture, seizure, arrest, restraint or detainment, and the consequences thereof or of any attempt thereof; also from the consequences of hostilities or warlike operations, whether there be a declaration of war or not; but this warranty shall not exclude collision, contact with any fixed or floating object (other than a mine or torpedo), stranding, heavy weather or fire unless caused directly (and independently of the nature of the voyage or service which the vessel concerned or, in the case of a collision, any other vessel involved therein, is performing) by a hostile act by or against a belligerent power; and for the purpose of this warranty "power" includes any authority maintaining naval, military or air forces in association with a power.

Further warranted free from the consequences of civil war, revolution, rebellion, insurrection or civil strife arising therefrom, or piracy.

And so we, the Assurers, are contented and do hereby promise and bind ourselves, each one for his own Part, our Heirs, Executors and Assigns to the Assured, their Executors, Administrators and Assigns, for the true Performance of the Premises, confessing ourselves paid the Consideration due unto us for this Assurance by the Assured

at and after the Rate of **TWENTY AND ONE THIRD CENTS PER CENT.**

IN WITNESS whereof we, the Assurers, have subscribed our Names and Sums assured in LONDON, 15th May 1908, as hereinafter appears.

N.B.—Corn, Fish, Salt, Fruit, Flour and Seed are warranted free from Average, unless general, or the Ship be stranded; Sugar, Tobacco, Hemp, Flax, Hides and Skins are warranted free from Average under Five Pounds per Cent.; and all other Goods, also the Ship and Freight, are warranted free from Average under Three Pounds per Cent. unless general or the Ship be stranded.

Now know Ye that We, the Assurers, members of the Syndicate(s) whose definitive Number(s) in the attached list are set out in the Table overleaf, or attached overleaf, hereby bind Ourselves, each for his own part and not one for another, and in respect of his due proportion only, to pay or make good to the Assured all such Loss and/or Damage which he or they may sustain by any one or more of the aforesaid perils, and so that the due proportion for which each of us the Assurers is liable shall be ascertained by reference to his proportion as ascertained according to the said List of the Amount, Percentage or Proportion of the total Sum assured which is in the said Table set opposite the definitive Number of the Syndicate of which such Assurer is a member.

IN WITNESS whereof the Manager of Lloyd's Policy Signing Office has subscribed his Name on behalf of each of Us.

LLOYD'S POLICY SIGNING OFFICE.

[Signature]

MANAGER.

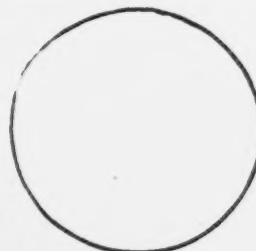


EXHIBIT "B" TO STIPULATION OF FACTS—7a

(Page 2)

(See opposite) 

AMOUNT, PERCENTAGE OR PROPORTION	SHIP'S NO.	LP SO SLP NO.	LP SO DATE	AMOUNT, PERCENTAGE OR PROPORTION	SHIP'S NO.	LP SO SLP NO.	LP SO DATE
PER CENT	5785	5290	2 159		53299	2 159	
	SYNDICATE				SYNDICATE		
	UNDERWRITER'S REFERENCE				UNDERWRITER'S REFERENCE		
3.6000	172	11	2313	.8000	753P	13	
.2000	42	11	2313	.6400	455A	7 56	PORT
.2000	1422	11	2313	.1600	456A	7 56	PORT
4.0000	4483	7 56	1150	.2000	2225	20	
.4608	2634	7 56		.6000	477T	3	
1.7280	4504	7 56		.8000	6975	7 56	
.3456	9024	7 56		1.0000	4834	04H	
.3456	9494	7 56		.2000	1364	04H	
.3200	1584	7 56		.4000	654P	ORT NE	
2.4000	655	145 3 7 56		.4000	6255	7 56	3596
4.0000	3680	H 25		.2000	6125	7 56	3596
3.2000	1084	251		.4000	2323	580	
.4000	1014	251		.2000	2303	580	
1.9200	1854	7 56	LY/44	.3200	128		
.1920	1874	7 56	LY/44	.0800	127		
.2880	24	7 56	LY/44	.6000	3582	H0 E	
3.2000	4184	7 56	2490	.4000	5350	COVER	1698
.2000	4214	7 56	2490	.3000	473W	1/2H	
2.8800	934			.3000	2646	9 56	40
.3200	941			.4000	3805	8/HCH50	
1.6000	6212	989		.4000	725P	ORT	16057
1.6000	2744	7 56					
1.6000	711H	0					
1.6000	7646	905					
1.6000	785H	29					
2.0000	9954	7 56	AH/5				

1.6000	5212449
1.6000	2744 7 56
1.6000	7111 0
1.6000	7646 405
1.6000	7151 29
2.0000	9954 7 56 AH/5

1.6000 1.6000 1.6000

AMOUNT, PERCENTAGE OR PROPORTION

RECEIPT NO. LPSO REP NO. LPSO DATE

53249 2 15

23


SYNDICATE

UNDERWRITER'S REFERENCE

1.6000	2954 7 56	43104
1.2000	115104	
1.3200	2135057	4 7
.4200	2065057	4 7
.5600	2035057	4 7
.5000	2075057	4 7
1.2400	7074 7 56	4337
.1200	7104 7 56	4337
.2400	7244 7 56	4337
1.1200	114078	PORT
.2400	111078	PORT
.2400	3194 7 56	
1.2000	284 7 56	
.8000	329	
.8000	5401950	
.8000	4644 7 56	
1.2000	3047147	
.8000	50N7F	
.4000	51N7F	
1.2000	493547	
2.0000	4384 7 56	4F3
.6400	4754 7 56	2528
.0800	4784 7 56	2528
.0800	2444 7 56	2528
.6000	4984 7 56	
.4000	314 1 56	

EXHIBIT "B" TO STIPULATION OF FACTS—7a

(Page 3)

(See opposite) 

2

A. The place of physical and actual issue and delivery of this policy is the City of London. Nevertheless (at the option of the Assured) as between the Assured and the Assurers the place of issue and delivery of the policy shall be considered the City of New York and all matters arising hereunder shall be determined in accordance with American law and practice. Any suit hereon may be brought against these Assurers in any Court of competent jurisdiction within the United States of America. The summons and other legal processes may be served on this Company by and in behalf of the Assured by mailing a copy thereof by United States registered mail addressed to Mr. Russell T. Mount, Mr. Wilbur H. Hecht or Mr. Frank A. Bull, all of the Law firm of Mendes & Mount, 27, William Street, New York 5, N.Y., each of whom this Company hereby authorizes to accept by and in its behalf such summons and other legal processes against this Company in any Court of competent jurisdiction within the United States of America. The mailing, as herein provided of such summons or other legal process shall be deemed personal service and accepted by this Company as such, and shall be legal and binding upon this Company for all the purposes of the suit. Final judgment against this Company in any such suit shall be conclusive; and it may be enforced in any other jurisdictions, including Great Britain, by suit on the judgment, a certified or exemplified copy of which shall be conclusive evidence of the fact and of the amount of this indebtedness. The right of the Assured to bring suit as provided herein shall be limited to a suit brought in its own name and for its own account. For the purposes of suit as herein provided the word "Assured" includes any mortgagee under a ship mortgage and any person succeeding to the rights of any such mortgagee.

The following clause to apply only if this Insurance is affected by the New York State Insurance Law :-

"Underwriters hereon hereby designate the Superintendent of Insurance of the State of New York or his successor in office their true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the (re) insured or any beneficiary hereunder arising out of this contract of (re) insurance."

1105.

B. The Assured shall be directly liable to the Assurer for all premiums under this policy. If payment of premium is not made by the Assured within 10 days after attachment of the Insurance, or, in the event the Assurers shall have agreed to accept deferred payments, if any payment of premium is not made on the day agreed, this policy may be cancelled by the Assurer giving to the Assured named herein five days' notice of such cancellation. A written and/or telegraphic notice by or through the brokers, or their American Correspondents who negotiated the insurance, to said Assured at his last known address shall constitute a complete notice as required under this clause. Such cancellation shall be without prejudice to premiums earned and due for the period the policy is in force.

No. 135.

1026

W. F. & D., Ltd. 8.10.57.

Where in accordance with established local practice the assured or the charterer enters into towage contracts under which the assured or the Charterer assumes liability for any damages resulting from collision of the vessel insured with another ship or vessel, including the towing vessel, and agrees to indemnify the tow-boat and/or her owners, charterers, operators, managers, agents and/or pilots against loss or liability for any such damage, it is agreed that amounts paid by the assured or charterer pursuant to such agreement, in respect of such damage caused by collision between the vessel insured and any other ship or vessel, shall be deemed payments "by way of damages to any other person or persons" within the meaning of the Collision Clause in this policy to the extent that such payments would have been covered under the said Collision Clause if the insured vessel had been responsible for the damage in the absence of any agreement.

1163. W.O. 13.2.58.

It is understood and agreed that the F. C. & S. Clause in the attached Form is hereby deleted and the following Clause :—

Unless physically deleted by the Underwriters, the following warranty shall be paramount and shall supersede and nullify any contrary provision of the Policy :

F. C. & S. CLAUSE.

Notwithstanding anything to the contrary contained in the Policy, this insurance is warranted free from any claim for loss, damage or expense caused by or resulting from capture, seizure, arrest, restraint or detainment, or the consequences thereof or of any attempt thereat, or any taking of the Vessel, by requisition or otherwise, whether in time of peace or war and whether lawful or otherwise ; also from all consequences of hostilities or warlike operations (whether there be a declaration of war or not), but the foregoing shall not exclude collision, explosion or contact with any fixed or floating object (other than a mine or torpedo), stranding, heavy weather or fire unless caused directly (and independently of the nature of the voyage or service which the vessel concerned or, in the case of a collision, any other vessel involved therein, is performing) by a hostile act by or against a belligerent power, and for the purpose of this warranty " power " includes any authority maintaining naval, military or air forces in association with a power ; also warranted free, whether in time of peace or war, from all loss, damage or expense caused by any weapon of war employing atomic fission or radioactive force. Further warranted free from the consequences of civil war, revolution, rebellion, insurrection, or civil strife arising therefrom, or piracy.

If war risks are hereafter insured by endorsement on the Policy, such endorsement shall supersede the above warranty only to the extent that their terms are inconsistent and only while such war risk endorsement remains in force.

is substituted therefor.

1104-17.11.55.

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This insurance is subject to terms and conditions of so-called London Institute Time Charter Party Form 1-9 May 1950 C. L. 92 Form with the following amendments and additions:—

AMENDMENTS

1. Delete Clauses (20) and (22) and substitute the following:—

(20) "This insurance also covers damage to or destruction of the property insured directly caused by strikers, locked out workmen or persons taking part in labour disturbances or riots or civil commotions or caused by vandalism, sabotage or malicious mischief, but excluding civil war, revolution, rebellion or insurrection, or civil strife arising therefrom, and warranted free from any claim for delay, detention or loss of use, and free from all loss of damage caused by any weapon of war employing atomic fission or radioactive force.

"Notwithstanding the exclusions in the F. C. & S. Clause in the within policy, 'vandalism,' 'sabotage' and 'malicious mischief,' as used herein, shall be construed to include wilful or malicious physical injury to or destruction of the described property caused by acts committed by an agent of any Government party or faction engaged in war, hostilities or other warlike operations, provided such agent is acting secretly and not in connection with any operations of military or naval armed forces in the country where the described property is situated."

(22) "Including loss or damage caused by earthquake, volcanic eruption or tidal wave arising therefrom."

2. Substitute the following American Institute F. C. & S. Clause for Clauses 19 and 21:—

F. C. & S. CLAUSE.

Notwithstanding anything to the contrary contained in the Policy, this insurance is warranted free from any claim for loss, damage or expense caused by or resulting from capture, seizure, arrest, restraint or detainment, or the consequences thereof or of any attempt thereat, or any taking of the Vessel, by requisition or otherwise, whether in time of peace or war and whether lawful or otherwise; also from all consequences of hostilities or warlike operations (whether there be a declaration of war or not), but the foregoing shall not exclude collision, explosion or contact with any fixed or floating object (other than a mine or torpedo), stranding, heavy weather or fire unless caused directly (and independently of the nature of the voyage or service which the vessel concerned or, in the case of a collision, any other vessel involved therein, is performing) by a hostile act by or against a belligerent power, and for the purpose of this warranty "power" includes any authority maintaining naval, military or air forces in association with a power; also warranted free, whether in time of peace or war, from all loss or damage caused by any weapon of war employing atomic fission or radioactive force. Further warranted free from the consequences of civil war, revolution, rebellion, insurrection, or civil strife arising therefrom, or piracy.

If war risks are hereafter insured by endorsement on the Policy, such endorsement shall supersede the above warranty only to the extent that their terms are inconsistent and only while such war risk endorsement remains in force.

3. Add the words "or the surety for them in consequence of their undertaking" in line 2 after the word "thereof"

4. Delete Clauses 3, 4 and 5.

5. Delete Clause 9 and substitute the following:—

9. General Average, Salvage and Special Charges payable as provided in the contract of affreightment, or failing such provision, or there be no contract of affreightment, payable in accordance with the laws and usages of the Port of New York. Provided always that when an adjustment according to the laws and usages of the port of destination is properly demanded by the owners of the cargo, General Average shall be paid in accordance with same.

6. Delete Clause 8 and substitute the following:—

This insurance also specially to cover (subject to the Average Warranty) loss of or damage to the subject matter insured directly caused by the following:—

Accidents in loading, discharging or handling cargo, or in bunkering;

Accidents in going on or off, or while on drydocks, graving docks, ways, griddons or pontoons;

Explosions on shipboard or elsewhere;

Breakdown of motor generators or other electrical machinery and electrical connections thereto, bursting of boilers, breakage of shafts, or any latent defect in the machinery or hull (excluding the cost and expense of replacing or repairing the defective part);

Contact with Aircraft or with any land conveyance;

Negligence of Charterers and/or Repairers, ~~other than on Arrival~~, Master, Mariners, Engineers or Pilots;

Provided such loss or damage has not resulted from want of due diligence by the Assured, the Owners or Managers of the Vessel, or any of them. Masters, Mates, Engineers, Pilots or Crew not to be considered as part owners within the meaning of this clause should they hold shares in the Vessel.

6. Delete Clause 8 and substitute the following:—

This insurance also specially to cover (subject to the Average Warranty) loss of or damage to the subject matter insured directly caused by the following:—

Accidents in loading, discharging or handling cargo, or in bunkering;

Accidents in going on or off, or while on drydocks, graving docks, ways, griddons or pontoons;

Explosions on shipboard or elsewhere;

Breakdown of motor generators or other electrical machinery and electrical connections thereto, bursting of boilers, breakage of shafts, or any latent defect in the machinery or hull (excluding the cost and expense of replacing or repairing the defective part);

Contact with Aircraft or with any land conveyance;

Negligence of Charterers and/or Repairers, ~~other than the Assured~~, Master, Mariners, Engineers or Pilots.


Provided such loss or damage has not resulted from want of due diligence by the Assured, the Owners or Managers of the Vessel, or any of them. Masters, Mates, Engineers, Pilots or Crew not to be considered as part owners within the meaning of this clause should they hold shares in the Vessel.

GENERAL ADDITIONS

7. To cover all risks of entering while in or on and leaving graving docks, dry docks, and any other facilities in or on which the vessel is not waterborne in whole or in part.
8. When the contributory value of the vessel is greater than the valuation herein the liability of these Underwriters for General Average contribution (except in respect to amount made good to the Vessel) or Salvage shall not exceed that proportion of the total contribution due from the Vessel that the amount insured hereunder bears to the contributory value; and if because of damage for which these Underwriters are liable as Particular Average the value of the Vessel has been reduced for the purpose of contribution, the amount of the Particular Average claim under this Policy shall be deducted from the amount insured hereunder and these Underwriters shall be liable only for the proportion which such net amount bears to the contributory value.
9. In the event of expenditure for Salvage, Salvage Charges or under the Sue and Labour Clause, this Policy shall only be liable for its share of such proportion of the amount chargeable to the property hereby insured as the insured value, less loss and/or damage, if any, for which the Underwriters are liable bears to the value of the salvaged property. Provided that where there are no proceeds or there are expenses in excess of the proceeds, the expenses, or the excess of the expenses, as the case may be, shall be apportioned upon the basis of the sound value of the property at the time of the accident and this Policy without any deduction for loss and/or damage shall bear its *pro rata* share of such expenses or excess of expenses accordingly.
10. In respect of the vessel insured hereunder, it is agreed that this policy also covers the Assured and affiliated companies of the Assured be they owners, subsidiaries or inter-related companies and as bareboat charterers and/or charterers and/or sub-charterers and/or any operators and/or in whatever capacity, and shall so continue to cover notwithstanding the provisions of this policy with respect to change of ownership or management, but the term "Assured" in the Inchmaree Clause shall not include such charterers except bareboat charterers. Provided, however, that in the event of any claim being made by any affiliated, subsidiary or inter-related company under this clause it shall not be entitled to recover in respect of any liability to which it would not be subject if it were the owner of the vessel, nor to a greater extent than an owner would be entitled in such event to recover. It is further agreed that these insurers waive any right of subrogation against any subsidiary, affiliated or inter-related company of the Assured, excepting to the extent that any such company is insured against the liability asserted. However, should the vessel be sold to or transferred to or chartered on a bareboat basis to others than the Assured or the affiliated companies of the Assured, or be requisitioned on a bareboat basis the provisions of this policy with respect to change of ownership or management shall govern.
11. It is agreed that the equipment of the vessel shall include bar stores, equipment for passengers' amusements, saloon and passenger cabin fittings, equipment, furnishings and decorations, as well as spare bunkers and all other stores and supplies, including stocks in shops, provided the same are owned by the assured.
12. Radio apparatus and equipment and other apparatus or equipment used for the purpose of communication or as aids to Navigation or safety devices, also equipment consisting of projection machines, sound apparatus and motion picture film shall be covered by this policy and included within the agreed valuation of the hull, even when not owned by the assured, provided the assured has assumed liability therefor; but the liability of Underwriters (either as to amount or as to the risks covered) shall not exceed the assured's liability or liability to which Underwriters would be subject, if the property were fully owned by the assured, whichever shall be least.
13. There shall be no rights of subrogation against the United States of America insofar as its interest (if any) in the insured vessel is concerned, but the right of subrogation shall exist against the United States of America as Owner of any other vessel or property to the same extent as though it were not named as an Assured in this policy.
14. Where in accordance with established local practice the assured or the charterer enters into towage contracts under which the assured or the charterer assumes liability for any damages resulting from collision of the vessel insured with another ship or vessel, including the towing vessel, and agrees to indemnify the towboat and/or her owners against loss or liability for any such damage, it is agreed that amounts paid by the assured or charterer pursuant to such agreement in respect of such damage caused by collision between the vessel insured and any other ship or vessel, shall be deemed payments "by or for the assured" of damages to any other person or persons within the meaning of the Collision Clause in this policy to the extent that such payments would have been covered under the said Collision Clause if the insured vessel had been responsible for the damage in the absence of any agreement.
15. It is hereby understood and agreed that the term "new management" in the Change of Ownership Clauses refers only to the transfer of the management of the vessel insured from one firm or corporation who have been managing the vessel to another and has no reference to any internal changes in the offices of the assured.

EXHIBIT "B" TO STIPULATION OF FACTS—7a

(Page 4)

(See opposite) 

SPECIAL CONDITIONS


16. This policy covers, as if separately insured, liability for Protection and Indemnity risks as defined in 1956 Group Certificate of Entry issued by Messrs. Thomas R. Miller & Son with exclusion in Paragraph 1 (a) of said certificate deleted.
It is especially agreed that this Protection and Indemnity extension shall pay the expenses of the removal of the wreck of the insured vessel from any place owned, leased or occupied by the Assured.
17. Privilege to overhaul, outfit, recondition, reconvert and make additions, alterations and repairs and to make trial trips (either within or without the port) but trial trips outside the port to be subject to additional premium, if required.
18. During any period the vessel is under repair it is agreed that this insurance extends to include any additional protection which the Assured would receive if the vessel were insured subject to Institute Clauses for Builders Risks 29th April 1937 (L13).
19. This insurance (subject to notice to Underwriters when risk is declared hereunder) shall, if required, extend to include the interest of any repairer who shall be considered as an additional Assured hereunder, and the right of subrogation against such repairer and such repairer's legal liability Underwriters is waived hereunder.
20. It is agreed that this insurance covers machinery, equipment and anything and everything owned by the Assured and intended for the vessel or which was on the vessel and are stored on docks and/or elsewhere on shore and while overhauling, repairing or installing same.
21. The Assured shall not be prejudiced by any agreement limiting or exempting the liability of tugs and/or towboats and/or their owners when the assured is compelled to accept such contracts.
22. Privilege to hold cargo aboard and to load and/or discharge cargo.
23. Held covered for trip other ports (in tow or otherwise) at an additional premium to be agreed.
24. In the event of a total loss or constructive total loss from the time of the attachment of this policy to the expiration of same, the amount payable under this policy shall be the amount stated herein plus this policy's proportion of any salvage and special charges and sue and labour expenses.
25. Seaworthiness of vessel admitted.
26. When any vessel insured hereunder requires war risks coverage (same to be specifically declared hereunder) or proceeds outside port limits, this insurance shall (at an additional premium to be agreed) extend to cover war etc. risks as per War Risks Clauses—Hulls (September 1956) limit 3 months, or longer periods provided that 7 days' notice of cancellation can be given by either underwriters or owners which notice shall be given prior to the expiry of any 3 months period, and in the event of notice being given under this clause 5 days prior notice of such cancellation shall be given to the United States Department of Commerce, Maritime Administration—attention, Chief, Division of Insurance, at Washington 25, D.C.—if they are interested in the insurance also the liability of the Assured for Protection and Indemnity risks as excluded by the F. C. & S. Clause in the Group Certificate of Entry hereinbefore referred to including Strikes, Riots and Civil Commotions and liability for contractual repatriation expenses of any member of the crew. In the event of the loss or shipwreck of the vessel from any cause, this insurance shall continue in force subject to an additional premium, if so required by Underwriters, until the crew shall be either discharged or landed at the port of signing on.
The Hull War Risk Clauses referred to above are modified by the deletion of the clause reading:
"Warranted free of any claims arising from capture, seizure, arrest, restraint, detainment, preemption, confiscation or requisition by the Government of the United States or of the country in which the vessel is owned or registered,"
and the following clause substituted therefor:—
"Warranted free from any claim arising from requisition or preemption by the country in which the vessel is owned or registered or to which the owner is committed by any understanding or agreement with respect to use or title in the event of an emergency"
27. Covering whilst in port at which declared, with privilege to move in tow or otherwise within port limits; trips to other ports held covered as elsewhere herein provided and this insurance to continue after arrival at such other ports.

If the vessel insured hereunder is bareboat chartered from the United States of America the following clauses (Nos. 1, 2 and 3) shall apply:

1. There shall be no rights of subrogation against the United States of America insofar as its interest in the insured vessel is concerned but the right of subrogation shall exist against the United States of America as Owner of any other vessel or property to the same extent as though it were not named as an Assured in this policy.
2. In the event of damage for which this policy would be liable and the exercise by the Owner of any option given in the Charter Party to accept redelivery of the vessel unrepaired, these Assurers agree to settle their respective proportions of claim for such damage on the basis of the estimated cost of such repairs at the prices current at the time of redelivery, this cost to be determined by surveyors representing the various parties interested or by a surveyor satisfactory to all of such parties.
3. Privilege of pro rata daily cancellation in event charter terminated.

EXHIBIT "B" TO STIPULATION OF FACTS—7a

(Page 5)

(See opposite) 

INSTITUTE TIME CLAUSES. HULLS—PORT RISKS.

1. It is further agreed that if the Vessel hereby insured shall come into collision with any other vessel and the Assured shall in consequence thereof become liable to pay and shall pay by way of damages to any other person or persons any sum or sums in respect of such collision, the Underwriters will pay the Assured such proportion of such sum or sums as paid as their respective subscriptions hereto bear to the value of the Vessel hereby insured, provided always that their liability in respect of any one such collision shall not exceed their proportionate part of the value of the Vessel hereby insured, and in cases in which the liability of the Vessel has been contested, or proceedings have been taken to limit liability with the consent in writing of the Underwriters, they will also pay a like proportion of the costs which the Assured shall thereby incur or be compelled to pay; but when both vessels are to blame, then unless the liability of the Owners of one or both of such vessels becomes limited by law, claims under this clause shall be settled on the principle of cross liabilities as if the Owners of each vessel had been compelled to pay to the Owners of the other of such vessels such one-half or other proportion of the latter's damages as may have been properly allowed in ascertaining the balance or sum payable by or to the Assured in consequence of such collision.

2. Should the Vessel hereby insured come into collision with or receive salvage services from another vessel belonging wholly or in part to the same Owners or under the same management, the Assured shall have the same rights under this Policy as they would have were the other vessel entirely the property of Owners not interested in the Vessel hereby insured; but in such cases the liability for the collision or the amount payable for the services rendered shall be referred to a sole arbitrator to be agreed upon between the Underwriters and the Assured.

3. It is further agreed that if by reason of interest in the Vessel the Assured shall become liable to pay and shall pay any sum or sums in respect of any liability, claim, demand, damages, and/or expenses arising from or occasioned by any of the following matters or things during the currency of this Policy, that is to say:—

Loss of or damage to any other vessel or goods, merchandise, freight, or other things or interests whatsoever, on board such other vessel, caused proximately or otherwise by the Vessel insured in so far as the same is not covered by Clause 1:

Loss of or damage to any goods, merchandise, freight, or other things or interest whatsoever, other than as aforesaid (not being property on board the insured Vessel and owned by builders or repairers or for which they may be responsible), whether on board the insured Vessel or not, which may arise from any cause whatsoever:

Loss of or damage to any harbour, dock (graving or otherwise), wharf, way, gridiron, pontoon, pier, quay, jetty, stage, buoy, telegraph cable or other fixed or movable thing whatsoever, or to any goods or property in or on the same however caused:

Any attempted or actual raising, removal, or destruction of the wreck of the insured Vessel or the cargo thereof, or any neglect or failure to raise, remove, or destroy the same:

Loss of life, personal injury, illness or payments made for life salvage: Any sum or sums for which the Assured may become liable or incur from causes not heretofore specified, but which are absolutely or conditionally recoverable from or undertaken by the United Kingdom Mutual Steamship Assurance Association Limited:

The Underwriters will pay the Assured such proportion of such sum or sums as paid, or which may be required to indemnify the Assured for such loss, as their respective subscriptions bear to the insured value of the Vessel hereby insured, provided always that the liability under this clause, together with any liability there may be under Clause 4, in respect of any one accident or series of accidents arising out of the same event, shall be limited to the sum hereby insured, but when the liability of the Assured has been contested and the consent in writing of the Underwriters, the Underwriters will also pay a like proportion of the costs which the Assured shall thereby incur or be compelled to pay.

4. This insurance also to pay the expenses, after deduction of the proceeds of the salvage, not recoverable under Clause 3, of the removal of the wreck of the insured Vessel from any place owned, leased or occupied by the Assured. Underwriters' liability under this clause is subject to the limitations in amount provided in Clause 5. The provisions of that clause regarding the payment of legal costs shall also apply hereto.

5. General average and salvage to be adjusted according to the law and practice obtaining at the place where the adventure ends, as if the contract of affreightment if any contained no special terms upon the subject; but where the contract of affreightment so provides the adjustment shall be according to York-Antwerp Rules.

6. Held covered in case of deviation or change of voyage, provided notice be given immediately after receipt of advice and any additional premiums required be agreed.

7. (a) In the event of expenses being incurred pursuant to the Suing and Labouring Clause, the liability under this Policy shall not exceed the proportion of such expenses that the amount insured hereunder bears to the value of the Vessel as stated herein, or to the sound value of the Vessel at the time of the occurrence giving rise to the expenditure if the sound value exceeds that value. Where Underwriters have admitted a claim for total loss and property insured by this Policy is saved, the foregoing provisions shall not apply unless the expenses of suing and labouring exceed the value of such property saved and then shall apply only to the amount of the expenses which is in excess of such value.

(b) Where a claim for total loss of the Vessel is admitted under this Policy and expenses have been reasonably incurred in saving or attempting to save the Vessel and other property and there are no proceeds, or the expenses exceed the proceeds, then this Policy shall bear its pro rata share of such proportion of the expenses, or of the expenses in excess of the proceeds, as the case may be, as may reasonably be regarded as having been incurred in respect of the Vessel; but if the Vessel be insured for less than its sound value at the time of the occurrence giving rise to the expenditure, the amount recoverable under this clause shall be reduced in proportion to the under-insurance.

8. Average payable irrespective of percentage and without deduction, new for old, whether the average be particular or general.

9. No claim shall in any case be allowed in respect of scraping or painting the Vessel's bottom.

10. In no case shall Underwriters be liable for unrepaired damage in addition to a subsequent total loss sustained during the period covered by this Policy.

11. In ascertaining whether the Vessel is a constructive total loss the insured value shall be taken as the repaired value and nothing in respect of the damaged or break-up value of the Vessel or wreck shall be taken into account.

No claim for constructive total loss based upon the cost of recovery and/or repair of the Vessel shall be recoverable hereunder unless such cost would exceed the insured value.

12. In the event of accident whereby loss or damage may result in a claim under this Policy, notice shall be given to Underwriters prior to survey and also, if the Vessel is abroad, to the nearest Lloyd's Agent so that a surveyor may be appointed to represent Underwriters should they so desire. Underwriters shall be entitled to decide the port to which the Vessel shall proceed for docking or repair (the actual additional expense of the voyage arising from compliance with Underwriters' requirements being refunded to the Assured) and shall have a right of veto concerning a place of repair or a repairing firm. Underwriters may also take tenders or may require tenders to be taken for the repair of the Vessel. Where a tender as taken is accepted with the approval of Underwriters an allowance shall be made at the rate of 50% per annum on the insured value for time lost between the dispatch of the invoice to tender and the acceptance of a tender to the extent that such time is lost solely as the result of tenders having been taken and provided that the tender is accepted without delay after receipt of Underwriters' approval.

Due credit shall be given against the allowance as above for any amount recovered:—

(a) In respect of fuel and stores and wages and maintenance of the Master Officers and Crew or any member thereof allowed in general or particular average.

(b) From third parties in respect of damages for detention and/or loss of profit and/or running expenses.

For the period covered by the tender allowance or any part thereof. Where a part of the cost of average repairs other than a fixed deductible franchise is not recoverable from Underwriters the allowance shall be reduced by a similar proportion.

In the event of failure to comply with the conditions of this clause, the

20 2. Should the Vessel hereby insured come into collision with or receive
21 salvage services from another vessel belonging wholly or in part to the same
22 Owners or under the same management, the Assured shall have the same
23 rights under this Policy as they would have were the other vessel entirely the
24 property of Owners not interested in the Vessel hereby insured; but in such
25 cases the liability for the collision or the amount payable for the services
26 rendered shall be referred to a sole arbitrator to be agreed upon between the
27 Underwriters and the Assured.

28 3. It is further agreed that if by reason of interest in the Vessel the
29 Assured shall become liable to pay and shall pay any sum or sums in respect
30 of loss of life, personal injury, illness or expenses arising from or
31 occasioned by any of the following matters or things during the currency of
32 this Policy, that is to say:—

33 Loss of or damage to any other vessel or goods, merchandise, freight, or
34 other things or interests whatsoever, on board such other vessel,
35 caused proximately or otherwise by the Vessel insured in so far as the
36 same is not covered by Clause 1:

37 Loss of or damage to any goods, merchandise, freight, or other things
38 or interest whatsoever, other than as aforesaid (not being property
39 on board the insured Vessel and owned by builders or repairers or
40 for which they may be responsible), whether on board the insured
41 Vessel or not, which may arise from any cause whatsoever:

42 Loss of or damage to any harbour, dock (graving or otherwise), slipway,
43 way, gridiron, pontoon, pier, quay, jetty, stage, buoy, telegraph
44 cable or other fixed or movable thing whatsoever, or to any goods
45 or property in or on the same howsoever caused:

46 Any attempted or actual raising, removal, or destruction of the wreck
47 of the insured Vessel or the cargo thereof, or any neglect or failure to
48 raise, remove, or destroy the same:

49 Loss of life, personal injury, illness or payments made for life salvage:
50 Any sum or sums for which the Assured may become liable or incur
51 from causes not heretofore specified, but which are absolutely or
52 conditionally recoverable from or undertaken by the United Kingdom
53 Mutual Steamship Assurance Association Limited:

54 the Underwriters will pay the Assured such proportion of such sum or sums
55 so paid, or which may be required to indemnify the Assured for such loss, as
56 their respective subscriptions bear to the insured value of the Vessel hereby
57 insured, provided always that the liability under this clause, together with
58 any liability there may be under Clause 4, in respect of any one accident
59 or series of accidents arising out of the same event, shall be limited to the
60 sum hereby insured, but when the liability of the Assured has been contested
61 with the consent in writing of the Underwriters, the Underwriters will also
62 pay a like proportion of the costs which the Assured shall thereby incur or
63 be compelled to pay.

64 4. This insurance also to pay the expenses, after deduction of the pro-
65 ceeds of the salvage, not recoverable under Clause 3, of the removal of the
66 wreck of the insured Vessel from any place owned, leased or occupied by the
67 Assured. Underwriters' liability under this clause is subject to the limitations
68 in amount provided in Clause 3. The provisions of that clause regarding the
69 payment of legal costs shall also apply hereto.

70 5. Notwithstanding the provisions of Clauses 3 and 4, this Policy is
71 warranted free from any claim arising:

72 (a) directly or indirectly under Workmen's Compensation or Employers'
73 Liability Acts and any other Statutory or Common Law Liability in
74 respect of accidents to or illness of workmen or any other persons
75 employed in any capacity whatsoever by the Assured or others in on
76 or about or in connection with the Vessel hereby insured or her cargo
77 materials or repairs.

78 (b) in connection with an occurrence resulting from the operation of
79 a part excepted by,

80 (i) the Free of Capture and Seizure Warranty,
81 (ii) the Free of Strikes, Riots and Civil Commotions Warranty.

82 6. With leave to proceed to and from any wet or dry docks, harbours,
83 ways, cradles, and pontoons during the currency of this Policy within the
84 limits mentioned herein.

85 7. If the Vessel is sold or transferred to new management then unless
86 the Underwriters agree in writing to continue the insurance this Policy shall
87 become cancelled from the time of sale or transfer. This clause shall prevail
88 notwithstanding any provision whether written, typed or printed in the
89 Policy inconsistent therewith.

90 8. This insurance also specially to cover loss of or damage to the subject
91 matter insured directly caused by the following:—

92 Accidents in loading, discharging or shifting cargo or fuel
93 Explosions on ship-board or elsewhere
94 Bursting of boilers, breakage of shafts or any latent defect in the
95 machinery or hull
96 Contact with Aircraft
97 Negligence of Master Officers Crew or Pilots

98 provided such loss or damage has not resulted from want of due diligence by
99 the Assured, Owners or Managers

100 Masters Officers Crew or Pilots not to be considered as part Owners within
101 the meaning of this clause should they hold shares in the Vessel.

102 10. Warranted free of capture, seizure, arrest, restraint or detainment, and the consequences thereof or of any attempt thereto; also
103 from the consequences of hostilities or warlike operations, whether there be a declaration of war or not; but this warranty shall not
104 exclude collision, contact with any fixed or floating object (other than a mine or torpedo), stranding, heavy weather or fire unless caused
105 directly (and independently of the nature of the voyage or service which the Vessel concerned or, in the case of a collision, any other
106 vessel involved therein, is performing) by a hostile act by or against a belligerent power; and for the purpose of this warranty "power"
107 includes any authority maintaining naval, military or air forces in association with a power.

108 Further warranted free from the consequences of civil war, revolution, rebellion, insurrection, or civil strife arising therefrom, or piracy.

109 20. Warranted free of loss or damage caused by strikers locked-out workmen or persons taking part in labour disturbances riots or civil
110 commotions.

111 Should Clause 10 be deleted, Clause 21 is to operate as part of this Policy.

112 21. Warranted free of any claim based upon loss of, or frustration of, the insured voyage or adventure caused by arrests restraints or
113 detentions of Kings Princes Peoples Usurpers or persons attempting to usurp power.

114 22. Warranted free of loss or damage caused by earthquake.

120 (b) Where a claim for total loss of the Vessel is admitted under this Policy 120
121 and expenses have been reasonably incurred in salvaging or attempting to save 121
122 the Vessel and other property and there are no proceeds, or the expenses exceed 122
123 the proceeds, then this Policy shall bear its *pro rata* share of such proportion of 123
124 the expenses, or of the expenses in excess of the proceeds, as the case may be, 124
125 as may reasonably be regarded as having been incurred in respect of the Vessel; 125
126 but if the Vessel be insured for less than its sound value at the time of the 126
127 occurrence giving rise to the expenditure, the amount recoverable under this 127
128 clause shall be reduced in proportion to the under-insurance. 128

129 12. Average payable irrespective of percentage and without deduction, 129
130 new for old, whether the average be particular or general. 130

131 13. No claim shall in any case be allowed in respect of scraping or painting 131
132 the Vessel's bottom. 132

133 14. In no case shall Underwriters be liable for unrepaired damage in addition 133
134 to a subsequent total loss sustained during the period covered by this Policy. 134

135 15. In ascertaining whether the Vessel is a constructive total loss the 135
136 insured value shall be taken as the repaired value and nothing in respect of the 136
137 damaged or break-up value of the Vessel or wreck shall be taken into account. 137

138 No claim for constructive total loss based upon the cost of recovery and/or 138
139 repair of the Vessel shall be recoverable hereunder unless such cost would 139
140 exceed the insured value. 140

141 16. In the event of accident whereby loss or damage may result in a claim 141
142 under this Policy, notice shall be given to Underwriters prior to survey and also, 142
143 if the Vessel is abroad, to the nearest Lloyd's Agent so that a surveyor may be 143
144 appointed to represent Underwriters should they so desire. Underwriters shall 144
145 be entitled to decide the port to which the Vessel shall proceed for docking 145
146 or repair (the actual additional expense of the voyage arising from compliance 146
147 with Underwriters' requirements being refunded to the Assured) and shall have 147
148 a right of veto concerning a place of repair or a repairing firm. Underwriters 148
149 may also take tenders or may require tenders to be taken for the repair of the 149
150 Vessel. Where a tender so taken is accepted with the approval of Underwriters 150
151 an allowance shall be made at the rate of 50% per annum on the insured value 151
152 for time lost between the despatch of the invitations to tender and the accept- 152
153 ance of a tender to the extent that such time is lost solely as the result of 153
154 tenders having been taken and provided that the tender is accepted without 154
155 delay after receipt of Underwriters' approval. 155

156 Due credit shall be given against the allowance as above for any amount 156
157 recovered:— 157

158 (a) in respect of fuel and stores and wages and maintenance of the 158
159 Master Officers and Crew or any member thereof allowed in 159
160 general or particular average. 160

161 (b) from third parties in respect of damages for detention and/or loss 161
162 of profit and/or running expenses. 162

163 Where a part of the cost of average repairs other than a fixed deductible 163
164 franchise is not recoverable from Underwriters the allowance shall be reduced 164
165 by a similar proportion. 165

166 In the event of failure to comply with the conditions of this clause, 15% 166
167 shall be deducted from the amount of the ascertained claim. 167

168 17. Warranted that no insurance (other than insurance against the 168
169 risks excluded by the Free of Capture etc. Clause and risks enumerated in the 169
170 Institute War and Strike Clauses) in excess in the aggregate of 25% of the 170
171 value stated herein, on Excess or Increased Value of Hull and Machinery, 171
172 Disbursements, Managers' Commissions, Profits, Freight or other interests, 172
173 however described, on or in respect of the Vessel hereby insured, and whether 173
174 or not on P.P.I., F.I.A. or other like conditions, is or shall be effected 174
175 to operate during the currency of this Policy by or for account of the Assured, 175
176 Owners, Managers or Mortgagees, except that in the event of the Vessel being 176
177 chartered during the currency of this insurance. 177

178 (a) a sum not exceeding the gross freight or hire for the first and 178
179 next succeeding cargo passage, or 179


180 (b) a sum not exceeding 50% of the gross hire which is to be earned 180
181 under the charter in a period not exceeding 18 months. 181

182 may be insured as from the date of the signing of the charter until the date 182
183 of expiry of this Policy. But if additional insurance has already been effected 183
184 in accordance with the provisions of this warranty then the sum to be 184
185 insured under (a) or (b) shall be reduced by such additional insurance in- 185
186 sofar as it exceeds 10% of the value stated herein. Provided always that a 186
187 breach of this warranty shall not afford Underwriters any defence to a claim 187
188 by a Mortgagee who has accepted this Policy without knowledge of such 188
189 breach. 189

190 18. It is agreed that no assignment of or interest in this Policy or in any 191
192 moneys which may be or become payable thereunder is to be binding on or 192
193 recognised by the Underwriters unless a dated notice of such assignment or 193
194 interest signed by the Assured, and by the assignor in the case of subsequent 194
195 assignment, is endorsed on this Policy and the Policy with each endorsement 195
196 is produced before payment of any claim or return of premium thereunder; 196
197 but nothing in this clause is to have effect as an agreement by the Underwriters 197
198 to a sale or transfer to new management. 198

EXHIBIT "B" TO STIPULATION OF FACTS—7a

(Page 6)

(See opposite) 

In all communications please quote
the following reference

576

69599

B. S. REVENUE STAMP
APPLIED TO COVER NCT.
PRO FORMA HELD BY JOURNAL
HOLDING

LOSSES IF ANY, HEREIN

Toad Shipping Corporation
(Galveston Texas)

OR ORDER

WILLIS FABER, DUN & CO

Willis Faber, Dun & Co
London

LLOYD'S



LONDON

5th November 1938

"ATZCAPOTRAIOO S.S."

Period 8.30 P.M. 11.8.38 O.S.T. to
10.10 P.M. 15.8.38 O.S.T.

On WILLIS, FABER, DUN & CO.,
22, BOND STREET, LONDON.

(In the event of accident whereby loss or damage may
result in a claim under this Policy, the settlement
will be much facilitated if immediate notice be given
to the nearest Lloyd's Agent.)

IMPORTANT.

Before presenting this policy for payment of any Claim or
Return of Premium it is essential that it shall bear the
signature of the party in whose name it is drawn, or of any
party to whom interest is transferred by endorsement.

154

[fol. 155]

EXHIBIT "C" TO STIPULATION OF FACTS

SALVAGE ASSOCIATION, LONDON

39 CORTLANDT STREET

NEW YORK 7, N. Y.

Cable Address "WRECKAGE" New York

FLORIDA OFFICE

1825 PRUDENTIAL BUILDING

JACKSONVILLE 7, FLA.

"IN ACCEPTING THIS REPORT OR CERTIFICATE IT IS AGREED THAT THE EXTENT OF THE OBLIGATION OF THIS ASSOCIATION WITH RESPECT THERETO IS LIMITED TO FURNISHING A SURVEYOR BELIEVED TO BE COMPETENT, AND IN THE MAKING OF THIS REPORT OR CERTIFICATE THE SURVEYOR IS ACTING ON BEHALF OF THE PERSON REQUESTING THE SAME, AND NO LIABILITY SHALL ATTACH TO THIS ASSOCIATION FOR THE ACCURACY THEREOF."

July 17th 1959

Survey Report No. 5192

This Is To Certify that the undersigned Surveyor at this port did at the request of Messrs Johnson & Higgins, 63 Wall Street, New York 5, New York, and on behalf of the Underwriters concerned in the Todds Shipyards Corporation Builders Risk Policy, survey without prejudice, the

HULL #179 (NAVY PILEDRIVER YPD-43)

for the purpose of ascertaining the nature and extent of the damage alleged to have been sustained during June 1959, in consequence of the subject vessel encountering heavy weather, while on passage in tow of the tug "M MORAN" from Houston Texas to Charleston, S. C.

Log books and extracts not available.

On the 9th June 1959, the Undersigned proceeded to the plant of Messrs Charleston Dry Dock Company, Charleston, S. C., where the vessel was lying afloat, and upon examination the following damage was found, and recommendations made:—

FOUND

128 linear feet 6" x 6" fir timber fenders including four radius sections gouged, cut and/or missing. Seven studs missing, thirteen bent.

Lower ring clamp to the retaining bracket for the hoisting cylinder fractured.

One angle valve at the lower control manifold of the hydraulic cylinder broken, 24" long section of hydraulic line pipe broken. Fluid to system leaked out.

Four (4) aft void tanks, 2 port and 2 starboard feed water tanks and one (1) port and one (1) starboard void tank contaminated with salt water.

[fol. 156]

FOUND (cont'd)

Forward section of decks scarred in numerous places.

One fuel tank check vent on the starboard side bent.

Two (2) sections of wood liners at base of piledriver gouged and split.

RECOMMENDED

128 linear feet fender system and 20 studs with bolts and nuts to be replaced.

To be removed, repaired and reinstalled as original.

Valve and 24" section hydraulic line to be renewed, refilled with fluid and tested under operating conditions.

To be opened up, cleaned and closed up in good order. (10 tanks).

RECOMMENDED

To be recoated.

To be renewed.

Approximately 12 linear feet wood liners to piledriver leads to be renewed.

GENERAL NOTES:

- A. All new and disturbed work to be tested and proven satisfactory.
- B. All new and disturbed work to be recoated.
- C. All removals necessary to effect repairs to be replaced in good order.

The cost of the foregoing repairs was agreed with Messrs Charleston Dry Dock Company, Charleston, S. C., in the sum of Six Thousand, and Seventy Seven Dollars, (\$6,077.00).

/s/H A WEBBER
Underwriter's Surveyor
Original Signed

JAMES D. LUCAS, JR.
Acting Surveyor

[fol. 158]

PLAINTIFF'S EXHIBIT No. 2

IN THE DISTRICT COURT OF TRAVIS COUNTY, TEXAS

53RD JUDICIAL DISTRICT

No. 112,081

TODD SHIPYARDS CORPORATION

—v.—

BOARD OF INSURANCE COMMISSIONERS, ET AL.

Supplemental Stipulations

It is stipulated and agreed by and between the parties hereto that each of the following recitations is true and correct and that this stipulation may be introduced in evidence on the trial of this case and as conclusive proof of each such recitation.

The proceeds from the tax imposed by Article 21.38, Section 2(e) of the Insurance Code of the State of Texas on premiums paid by the insureds to unadmitted insurers is paid to the State Board of Insurance. The State Board of Insurance and the Comptroller of the State of Texas, by departmental construction, have construed the levy imposed by Article 21.38, Section 2(e) as a tax upon gross premiums, and have transferred the proceeds from 21.38, Section 2(e) to the State Comptroller's Omnibus Fund. (Fund No. 120) Up until August 31, 1959, the total amount so transferred exceeded \$53,000.00. Most of the proceeds in the State Comptroller's Omnibus Fund are derived from occupation taxes. Article 7, Section 3 of the Constitution of the State of Texas requires that one-fourth of all occupation taxes be set aside for the Public Free School Fund. One-fourth of the Omnibus Fund is set aside for the Public Free School Fund, and, accordingly, one-fourth of the taxes collected under Article 21.38, Section 2(e) have been set aside for the Public Free School Fund.

Article 21.38, Section 2(d) of the Texas Insurance Code imposes a tax of 5% on premiums paid by insureds to unauthorized insurers for insurance in excess of that which can be procured from authorized insurers. Licensed agents procuring such excess insurance are made liable for the tax imposed by 21.38, Section 2(d); and this tax has been [fol. 159] construed by departmental construction by the State Board of Insurance and the State Comptroller as a tax on gross premiums. At least since September 1, 1955, and for an undetermined period prior to September 1, 1955, all proceeds from the tax imposed by Article 21.38, Section 2(d) have been transferred by the State Board of Insurance and the State Comptroller to the State Comptroller's Omnibus Fund. (Fund 120) Article 7, Section 3 of the Constitution of the State of Texas requires that one-fourth of all occupation taxes be set aside for the Public Free School Fund. One-fourth of the Omnibus Fund is set aside for the Public Free School Fund, and, accordingly, one-fourth of the taxes collected under Article 21.38, Section 2(d) have been set aside for the Public Free School Fund.

For the Comptroller's accounting year ending August 31, 1957, the total proceeds collected due to the tax imposed by Article 21.38, Section 2(d) amounted to \$596,123.95. For the Comptroller's accounting year beginning August 31, 1957, and ending August 31, 1958, the total proceeds collected due to such tax amounted to \$343,387.91. For the Comptroller's accounting year beginning August 31, 1958 and ending August 31, 1959, the total proceeds collected due to such tax amounted to \$439,925.34.

Article 21.38, Section 2(a) of the Texas Insurance Code imposes an annual license fee of \$25.00 upon commissioned agents who desire to place excess insurance with unadmitted insurers in accordance with Article 21.38, Section 2(c) and (d). The fee imposed by Article 21.38, Section 2(a) is a charge for the privilege of obtaining such a license, and the proceeds of this fee have been and are transferred to Fund 124, the agents' license fund, and not to the Comptroller's Omnibus Fund (Fund 120). The monies in Fund 124 are appropriated for the use of the State Board of Insurance.

On any products liability incurred by Todd Shipyards and covered by Lloyds of London and Institute of London Underwriters policies 542/59/137084 (Ex. B-5a and 5b) and 542/59/137085 (Ex. 6a and 6b), the first \$25,000.00 of such liability is to be paid by Traveler's Insurance Company, primary carrier. Traveler's Insurance Company is an admitted insurer and authorized to do business in the State of Texas.

[fol. 160] However, each party reserves the right to introduce other evidence at the time of the trial so long as such evidence is not offered to contradict any of the agreed recitations.

Will Wilson, Attorney General of Texas, Fred B. Werkenthin, Assistant Attorney General, Bob E. Shannon, Assistant Attorney General, Attorneys for Defendants, Capitol Station, Austin 11, Texas.

Liddell, Austin, Dawson & Huggins, by Charles R. Vickery, Jr., by Meyer W. Witt.

[fol. 161]

PLAINTIFF'S EXHIBIT No. 3

IN THE DISTRICT COURT OF TRAVIS COUNTY, TEXAS

53RD JUDICIAL DISTRICT

No. 112,081

TODD SHIPYARDS CORPORATION

—v.—

BOARD OF INSURANCE COMMISSIONERS, ET AL.

Supplemental Stipulation No. 2

It is stipulated and agreed by and between the parties hereto that each of the following recitations is true and correct and that this stipulation may be introduced in evidence on the trial of this case and as conclusive proof of each such recitation.

The total gross tax fund from Art. 7064 from August 1956 to August 1957 cleared to the Comptroller's Omnibus Fund by the State Board of Insurance from licensed domestic and foreign stock or mutual, fire and/or casualty insurance companies was \$14,689,431.19.

The total gross tax fund from Art. 7064 from August 1957 to August 1958 cleared to the Comptroller's Omnibus Fund by the State Board of Insurance from licensed domestic and foreign stock or mutual, fire and/or casualty insurance companies was \$16,360,508.42.

The total gross tax fund from Art. 7064 from August 1958 to August 1959 cleared to the Comptroller's Omnibus Fund by the State Board of Insurance from licensed domestic and foreign stock or mutual, fire and/or casualty insurance companies was \$16,540,225.28.

The insurance brokers, Johnson-Higgins, Griswold & Company, and Marsh & McLennan, which handled the insurance transactions involved in this lawsuit are licensed New York insurance brokers, and are licensed to place the said insurance of the insurers.

However, each party reserves the right to introduce other evidence at the time of the trial so long as such evidence is not offered to contradict any of the agreed recitations.

Will Wilson, Attorney General of Texas, Fred B. Werkenthin, Assistant Attorney General, Bob E. Shannon, Assistant Attorney General.

Liddell, Austin, Dawson & Huggins, By Charles R. Vickery, Jr., By Meyer W. Witt.

Taxed

[fol. 162]


ATTACHMENTS TO SUPPLEMENTAL STIPULATION

TODD SHIPYARDS CORPORATION
(PRODUCTS DIVISION)

JANUARY 20, 1960

TYPE OF INSURANCE				DATE PAID	PREMIUM INVOLVED	TAX
Builders Risk —	Hull No.	179		12/23/59	\$ 979.58	\$ 48.98
"	"	"	183	"	1,468.92	73.45
"	"	"	244	"	8,753.38	437.67
"	"	"	183	"	13,530.00	676.50
"	"	"	206-7-8	12/10/59	341.07	17.05
"	"	"	218-37	"	462.93	23.14
"	"	"	"	"	945.16	47.26
"	"	"	244	"	943.44	47.17
"	"	"	238-9	"	1,723.21	86.16
					<u>\$29,147.69</u>	<u>\$1,457.38</u>

(Attachment to Supplemental Stipulation.)

(See opposite) 

<u>Policy</u>	<u>Period</u>	<u>Risk</u>	<u>Premium</u>	<u>Tax Paid</u>	<u>Date Tax Paid</u>	<u>Date Premium Paid</u>
Pro Forma of Lloyd's #576/88590 London and Institute of London Underwriters	Construction Period	Builders Risk Ins. Cover- ing Hall No. 214 during construction	86.02 13.35	4.30 .67	3/31/59 8/31/59	3/31/59 7/16/59
Pro Forma of Lloyd's #576/91259 London and Institute of London Underwriters	Construction Period	Builders Risk Ins. Cover- ing Halls Nos. 216 and 217 during construction	385.56 2,535.91	19.28 126.80	8/31/59 "	7/16/59 "
Lloyd's London #576/91101 Institute of London Underwriters	Repair Period	Builders Risk Ins. cover- ing Hall No. 216 during re- pairs carried out after construction & delivery had been completed	-	-	-	-
Lloyd's London #576/91260 Institute of London Underwriters	Construction Period	Builders Risk Ins. Cover- ing Halls Nos. 238 & 239 during construction	62.29	3.11	8/31/59	7/13/59
Lloyd's London #576/91261 Institute of London Underwriters	Construction Period	Builders Risk Ins. Cover- ing Hall No. 240 during construction	860.13	43.01	8/31/59	7/13/59

8,122.84

See attached itemized list -----

1,457.38

9,580.22


Plus Galveston Division total -----

11,025.31

TOTAL Tax paid -----


\$ 20,605.53

(Attachment to Supplemental Stipulation.)

(See opposite) 

<u>Policy</u>	<u>Period</u>	<u>Risk</u>	<u>Premium</u>	<u>Tax Paid</u>	<u>Date Tax Paid</u>	<u>Date Premium Paid</u>
Lloyd's London Institute of London Underwriters #576/86391	Construction Period	Builders Risk Ins. Covering Hull No. 180 during construction	870.53	57.24	9/16/58	9/3/57
Lloyd's London Institute of London Underwriters #576/86390	Construction Period	Builders Risk Ins. Covering Hulls Nos. 181 & 182 during construction	108.63	6.97	9/16/58	2/11/58
Pro Forma of Lloyd's London and Institute of London Underwriters #576/88655	Construction Period	Builders Risk Ins. Covering Hull No. 183 during construction	12,491.08	624.55	1/19/59	1/19/59
Pro Forma of Lloyd's London and Institute of London Underwriters #576/88884	Construction Period	Builders Risk Ins. Covering Hull No. 184 during construction	713.36	35.67	10/14/58	10/14/58
Lloyd's London Institute of & #576/86389 London Underwriters #576/86902	Construction Period	Builders Risk Ins. Covering Hulls Nos. 185 to 199 during construction	205.27 102.53	10.26 6.57	3/31/59 9/16/58	3/31/59 2/11/58
Pro Forma of Lloyd's London and Institute of London Underwriters #576/88885	Construction Period	Builders Risk Ins. Covering Hulls Nos. 202 and 203 during construction	3,660.49	183.02	8/31/59	8/24/59
Lloyd's London Institute of London Underwriters #576/89740	Construction Period	Builders Risk Ins. Covering Hull No. 204 during construction	304.03	15.20	4/8/59	4/8/59
Pro Forma of Lloyd's London and Institute of London Underwriters #576/91301	Construction Period	Builders Risk Ins. Covering Hulls Nos. 206, 207 & 208 during construction	1,595.20	79.76	8/31/59	7/16/59
Lloyd's London Institute of London Underwriters #576/91258	Construction Period	Builders Risk Ins. Covering Hull No. 209 during construction	613.84	30.69	8/31/59	7/13/59
Lloyd's London Institute of London Underwriters #576/88589	Construction Period	Builders Risk Ins. Covering Hull No. 213 during construction	97.41	4.87	10/14/58	10/14/58

(Attachment to Supplemental Stipulation.)

(See opposite) 

**SHIPYARDS CORPORATION
(PRODUCTS DIVISION)**

<u>POLICY</u>	<u>Period</u>	<u>Risk</u>	<u>Premium</u>	<u>Tax Paid</u>	<u>Date Tax Paid</u>	<u>Date Premium Paid</u>
Lloyd's London Institute of London Underwriters	#542/M.D.9350	6/6/56 to 6/6/57	Hull & Machinery Ins. Todd-owned Dry Docks	\$ -	\$ -	-
		6/6/57 to 5/6/58	28,430.25	1,887.88	9/16/58	7/3/57
		6/6/58 to 6/6/59	28,430.25	1,781.27	"	7/3/58
		6/6/59 to 6/6/60	26,251.46	1,312.57	8/31/59	7/9/59
		" "	2,180.92	109.05	"	"
Lloyd's London Institute of London Underwriters		5/16/57 to 5/16/58	Collision, Flood, Sub- sidence & Collapse Ins.- Piers, Bulkheads & Launch- ing Ways	4,000.00	264.96	9/16/58
		" "	3,375.36	221.95	9/16/58	9/4/57
		5/16/58 to 5/16/59	8,000.00	500.74	"	7/9/58
	#509/59/BH468/JY	5/16/59 to 5/16/60	7,500.00	375.00	8/31/59	8/27/59
				<u>1,097.69</u>		
Pro Forma of Lloyd's London and Institute of London Under- writers		9/30/56 to 9/30/57	Industrial Work Property Damage Insurance	199.18	12.92	9/16/58
		9/30/57 to 9/30/58		500.00	25.00	2/12/59
		" "	2,515.78	160.37	9/16/58	3/19/58
	#576/89514	9/30/58 to 9/30/59		-	-	-
Lloyd's London Institute of London Underwriters		1/3/57 to 5/1/57	Products Liability Ins. First Excess Cover	104.60	6.71	9/16/58
	#542/59/137084	5/1/59 to 5/1/60		-	-	-
Lloyd's London Institute of London Underwriters	#542/59/137085	5/1/59 to 5/1/60	Products Liability Ins. Second Excess Cover	-	-	-
Pro Forma of Lloyd's London and Institute of London Under- writers	#576/90158	Construction Period	Builders Risk Ins. cover- ing Hull No. 179 during construction	4,248.98	212.45	8/31/59
						7/13/59

PLAINTIFF'S EXHIBIT No. 4

Eighty-Fourth Annual Report
of the
STATE BOARD OF INSURANCE

For the Year Ending August 31, 1959

(Emblem)

PENN J. JACKSON
Chairman of the Board

DAVID B. IRONS
Member

ROBERT W. STRAIN
Member

WILLIAM A. HARRISON
Commissioner of Insurance

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TOTAL CLEARED TO OMNIBUS FUND

August 31, 1959

	AMOUNT
Penalties on Delinquent Taxes	\$ 494.46
Domestic Life	1,651,984.99
Foreign Life	8,218,072.02
Domestic Stock Fire	37,300.92
Foreign and Alien Stock Fire	299,993.36
Excess Agents	439,925.34
Domestic Mutual Fire and/or Casualty	92,503.84
Foreign Mutual Fire and/or Casualty	2,054,034.54
Domestic Stock Fire and/or Casualty	1,063,644.05
Foreign and Alien Stock Fire and/or Casualty	12,694,016.05
Domestic Stock Casualty	258,304.34
Foreign Stock Casualty	340,421.54
Mexican Casualty	9,520.65
Lloyds	81,483.24
Reciprocal Domestic	35,249.49
Reciprocal Foreign	623,607.95
Title	193,887.62
Mutual, Life, Health and Accident	174,520.14
County Mutual Fire	17,309.60
Insurance purchased from unauthorized insurers	31,065.77
Retaliatory Fees	195,376.52
	<u>\$28,512,716.43</u>

[fol. 168]

PLAINTIFF'S EXHIBIT No. 6

TOTAL CLEARED TO OMNIBUS FUND

FOR 1957-58

CODE	AMOUNT
Penalties on Delinquent Taxes	3844
A Domestic Life	1,648,472
B Foreign Life	7,431,092
C Domestic Stock Fire	43,494
D Foreign and Alien Stock Fire	449,072
Excess Agents	343,387
E Domestic Mutual Fire and/or Casualty	54,504
F Foreign Mutual Fire and/or Casualty	2,063,577
G Domestic Stock Fire and/or Casualty	973,018
H Foreign and Alien Stock Fire and/or Casualty	12,383,280
I Domestic Stock Casualty	253,622
J Foreign Stock Casualty	139,932
K Mexican Casualty	979
L Lloyds	84,704
M Reciprocal Domestic	35,157
N Reciprocal Foreign	299,553
Q Title	149,890
V Mutual, Life Health and Accident	162,981
W County Mutual Fire	17,468
Insurance purchase from unauthorized Insurers	22,443

 \$26,555,822

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PLAINTIFF'S EXHIBIT No. 7

Part I

of the

ANNUAL REPORT OF THE

COMPTROLLER OF PUBLIC ACCOUNTS

of the

STATE OF TEXAS

1959

Receipts and Disbursements
of
State Funds

ROBERT S. CALVERT
Comptroller

TO THE GOVERNOR

(Emblem)

TABLE No. 103

OMNIBUS TAX CLEARANCE FUND NO. 120

Year Ended August 31, 1959

		BALANCE ON HAND		RECEIPTS	TOTAL
		9-1-58			
050	Crude Oil	\$ 9 994 563 91		\$134 577 945 00	\$144 572 508 91
051	Natural Gas	647 896 99		46 835 881 40	47 483 778 99
052	Sulphur	3 118 55		3 522 487 23	3 525 605 78
054	Cement	231 491 59		2 612 798 78	2 844 290 37
057	Utilities	48 338 97		7 152 917 81	7 201 256 78
058	Telephone	737 48		7 247 329 10	7 248 066 58
059	Well Servicing	95 511 29		1 115 650 36	1 211 161 65
060	Motor Carriers	4 509 97		102 333 82	106 843 79
061	Stock Share				
	Transfer	19 749 75		242 041 12	261 790 87
077	Coin Operating				
	Machines	2 538 75		225 867 50	228 406 25
083	Radios	12 674 94		1 657 391 82	1 670 066 76
084	Cosmetics	74 007 41		811 943 74	885 951 15
085	Cards	2 250 02		32 454 54	34 704 56
133	Insurance				
	Occupation	199 144 15		28 512 716 43	28 711 860 58
138	Liquor	712 860 75		12 518 439 31	13 231 300 06
139	Wine	42 331 18		964 883 32	1 007 214 50
142	Ale	9 866 46		141 966 46	151 832 92
143	Prescription	22 00		288 20	310 20
148	Auto Sales	1 207 496 78		20 371 704 10	21 579 200 88
153	Beer	1 803 194 88		17 048 102 70	18 851 297 58
248	Cigarette				
	Permits	29 768 00		454 699 71	484 467 71
135	Cigarette Tax	3 149 563 21		51 324 583 36	54 474 146 57

TABLE No. 103 Continued

94.171]					
25	Liquor				
	Permits	\$	0 —	\$	682 687 42
				\$	682 687 42
26	Wine & Beer				
	Permits		63 682 63		627 754 17
					691 436 80
27	Store Tax				
	Exemption		1 976 41		192 335 03
					194 311 44
28	Store Tax		8 202 02		2 121 290 70
					2 129 492 72
29	Exemption Fees		478 00		39 304 00
					39 782 00
30	Store Tax				
	Service Fees		715 00		13 735 00
					14 450 00
36	Store Tax Fees		1 522 30		129 977 50
					131 499 80
		\$	18 368 213 39	\$341 281 479 63	\$359 649 693 02

Allocated as Follows:

Enforcement:

Crude Oil Enforcement Fees:

General Revenue

Restricted \$ 419 631 20

Comptroller's Operating

Fund 255 027 18 \$ 674 658 38

Natural Gas Enforcement Fees:

General Revenue

Restricted 217 402 62

Comptroller's Operating

Fund 16 760 52 234 163 14

Cosmetics-Cards Enforcement Fees:

General Revenue

Restricted 7 577 31

Comptroller's Operating

Fund 10 835 79 18 413 10

Store Exempt Filing Fees:

General Revenue

Restricted 11 594 00

Comptroller's Operating

Fund 27 522 00 39 116 00

TABLE No. 103 Continued

Store Tax Filing Fees:

General Revenue		
Restricted	\$	25 176 80
Comptroller's Operating Fund		
		104 795 50
	\$	129 972

Vending Machine		
Enforcement Fund		25 000 00
Cigarette Tax		
Enforcement Fund		1 020 301 12
Radio-Television		
Enforcement Fund		33 401 12
Available School Fund		83 613 804 50

General Allocations:

Farm to Market		
Road Fund		15 000 000 00
State Blind		
Assistance Fund		1 299 999 98
State Children		
Assistance Fund		3 900 000 00
Teacher Retirement		
System		33 141 604 98
State Old Age		
Assistance Fund		39 660 973 00
State Disabled		
Assistance Fund		1 500 000 00
Foundation School		
Fund		98 989 673 12

[fol. 172]

General Revenue Fund		
—for Repayment of		
Advances to Founda-		
tion School Fund		29 276 146 00
General Revenue Fund		
Cigarette Tax	43 517 819 74	
Store & Store		
Exemption Tax	1 753 690 62	45 271 510 36

TABLE NO. 103 Continued

Legislative Expense Fund—

Cigarette Tax

\$ 1 900 000 00

Total Allocated

\$355 728 739 26

NET CASH BALANCE,

August 31, 1959:

Reserved for Transfer

Sept. 1, 1959, to:

Comptroller's Operating Fund:

Crude Oil Enforcement

Fees

48 204 15

Natural Gas Enforcement

Fees

3 225 73

Store License &

Exemption Fees

2 193 50

Cigarette Tax Enforcement

Fees

81 292 49

General Allocations to:

State Old Age

Assistance Fund

3 318 253 59

State Disabled

Assistance Fund

30 220 93

State Blind

Assistance Fund

112 533 37

State Children

Assistance Fund

325 000 00

3 920 953 76

\$359 649 693 02

[fol. 173]

DEPOSITION OF EDWARD W. COSTELLO

10,802

IN THE DISTRICT COURT OF TRAVIS COUNTY, TEXAS

53RD JUDICIAL DISTRICT

No. 112,081

TODD SHIPYARDS CORPORATION, Plaintiff,

—against—

BOARD OF INSURANCE COMMISSIONERS, et al., Defendants.

One Broadway,
New York, New York.

November 12, 1959
10:30 o'clock a.m.

DEPOSITION OF EDWARD W. COSTELLO

[Stamp—Filed in Court of Civil Appeals, 3rd Supreme
Judicial District, Austin, Texas, Apr 5, 1960, Mrs. R. E.
Moore, Clerk, By, Deputy.]

[Stamp—Filed in the 53 District Court of Travis County,
Texas at 8:30 A.M., Nov 23, 1959, O. T. Martin, Jr., District
Clerk, By Vera B. Steedley, Deputy.]

Taxed

[fol. 174]

IN THE DISTRICT COURT OF TRAVIS COUNTY, TEXAS

53RD JUDICIAL DISTRICT

No. 112,081

TODD SHIPYARDS CORPORATION, Plaintiff,

—against—

BOARD OF INSURANCE COMMISSIONERS, et al., Defendants.

Deposition of Edward W. Costello, taken by Defendant Board of Insurance Commissioners, pursuant to stipulation between the parties, at No. 1 Broadway, New York, New York, on November 12, 1959, at 10:30 a.m., before a Notary Public in and for the State of New York.

[fol. 175] Appearances:

Liddell, Austin, Dawson & Huggins, Attorneys for the Plaintiff, 510 Gulf Building, Houston 2, Texas, By: Harry G. Hill, of Counsel.

Will Wilson, Attorney for the Defendant, Attorney General of the State of Texas, Capitol Station, Austin, Texas, By: Bob Shannon, of Counsel, Assistant Attorney General.

The parties to the above cause, through their attorneys of record, agree that the deposition of Edward W. Costello, a witness for the plaintiff, may be taken on oral examination of such witness before a certified shorthand reporter and notary public of the State of New York on November 12, 1959.

The said parties agree to waive all requirements of notice, service of notice, commission, and issuance of commission, and waive all other requirements of the statutes

and rules regarding the taking of oral depositions, and agree that said deposition shall be taken as follows:

I.

It is agreed by the parties that objections to the testimony [fol. 176] not made during the taking of the deposition are not waived, and may be urged for the first time at the trial when this deposition or any part of it is read into evidence.

II.

It is agreed that after such testimony has been transcribed by the court reporter, he shall then certify on said deposition that the witness was duly sworn by him, and further that the deposition is a true record of the testimony given by the witness, and that he will file this deposition with the clerk of the court in which this cause is pending.

III.

It is agreed between the parties that all the requirements with respect to the submission of the transcribed deposition to the witness for examination and reading and signing are waived.

[fol. 177] EDWARD W. COSTELLO, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Shannon:

Q. State your name, please.

A. Edward W. Costello.

Q. Your residence is New York City, New York?

A. I am a resident of Englewood, New Jersey.

Q. You are employed by whom?

A. Todd Shipyards Corporation.

Q. That is a New York corporation?

A. That is correct.

Q. When was it incorporated?

A. 1916.

Q. Where are the main offices of Todd Shipyards Corporation located?

A. One Broadway, New York City.

Q. Mr. Costello, what other states, if any, does Todd Shipyards Corporation have offices in?

A. May this be off the record?

Mr. Hill: Off the record.

(Discussion off the record.)

A. The states are New Jersey, Louisiana, Texas, California, and Washington.

Q. Do you have plants located in any other part of the world?

A. No.

Q. At each one of these plants, do you maintain an office?

A. Yes.

Q. Where are your offices in Texas, and plants?

A. Our plants and offices in Texas: One is located on Pelican Island in Galveston, Texas; and the other is located on Industrial Road in Houston, Texas.

Q. When did you first enter into Todd's Texas business?

A. 1934.

Q. At that time, you secured a certificate of authority to do business in Texas?

A. That I don't know.

Mr. Hill: Yes.

A. The answer is yes.

Q. Approximately, Mr. Costello, how many employees do you have employed in these two plants in Texas?

A. Well, the number, of course, is dependent upon the volume of work, and it fluctuates rather drastically. But [fol. 179] I would say that we possibly have at the present time, oh, 1,500 employees.

Mr. Hill: Suppose I check that and see what the count is today.

Mr. Shannon: All right.

Q. What position do you hold with the Todd Shipyards Corporation?

A. Assistant-Treasurer, insurance and claims manager.

Q. What do those duties encompass?

A. Arrangements of insurance, the settlement of claims.

Q. Mr. Costello, tell me a little bit about Todd Shipyards Corporation. What is the nature generally of the business of Todd? What do you do?

A. Ship repair and conversion work. Construction of vessels, manufacture of industrial equipment, oil burners, et cetera.

Q. What do you do at the plant located in Texas—generally the same, or are they specialized?

A. No; there it would be the same.

Q. The same type of work?

A. Yes.

Q. You are aware, Mr. Costello, that your company [fol. 180] has filed a franchise tax return in the State of Texas?

A. I am, yes.

Q. You are also aware that on your franchise tax return you stated that you did approximately 27 per cent plus of your total volume of business in Texas?

A. That I don't know of my own knowledge.

Q. You carry insurance on your various properties in the State of Texas?

A. Yes.

Q. What type of insurance do you carry on the various risks, if we can just list them by types; and then if you will describe generally what each kind of insurance is.

A. Fire, extended coverage, vandalism, malicious mischief.

Q. That is one type.

A. Yes.

Second type is hull and machinery on our dry docks.

Q. What is that first word?

A. Hull and machinery insurance on our dry docks. You want all types of insurance, whether they are involved in that tax situation or not; is that right?

Q. I want all types that would apply to your Texas [fol. 181] plants.

A. Hull and machinery insurance on floating equipment.

Collision, flood, subsidence, and collapse insurance on piers and bulkheads.

I am trying to think of others.

Steam boiler insurance.

Workmen's compensation insurance. Public liability insurance. Products liability insurance. Interior robbery and safe burglary and messenger robbery insurance. Legal liability insurance. Industrial work property damage insurance.

My memory is running out a bit. Builders risk insurance.

Q. Mr. Costello, out of that list of types of insurance, what are the kinds of insurance that are involved in this tax suit of some twelve that you have listed; how many?

A. The types of insurance on which we have paid the tax under protest are the industrial work property damage insurance, the builders risk insurance, the dry dock insurance, the pier and bulkhead collision insurance, and the product liability insurance, to the extent of the excess portion of that insurance.

[fol. 182] Q. What do you mean, to the excess portion?

A. Because it is only the excess portion that is in non-admitted cost.

Q. Would you describe very briefly for us what each type of the insurance policies are designed for and what kind of properties or risks do they protect. Starting with number one.

A. Fire, extended coverage, vandalism and malicious mischief.

Q. I mean on controverted types of insurance the ones that you have paid under protest to the State of Texas.

A. The dry dock insurance covers any damage from marine perils, the elements, collision, sinking, stranding, or negligence, negligence on the part of your employees, or the fault of any other parties.

Q. Now just go down the list of the other types and give a general definition.

A. Next is pier and bulkhead collision insurance. I shortened that. Covers any damage to the piers and bulkheads at our plants caused by collision, caused by flood, meaning a rise of navigable waters, subsidence or collapse.

Q. All right. The next one.

[fol. 183] A. The industrial work property damage insurance covers also damage to any property belonging to others which is undergoing repairs by us, or any property which is being put into a job which we are fabricating on order from others, exclusive of ship repair work and ship construction work.

Q. A type of liability insurance, is that right?

A. That is correct, yes.

Q. Would you continue the other types, please?

A. Builders risk insurance is a form of insurance that we arrange on all vessels that we have under construction, and in some instances on vessels on which we have major conversion jobs.

It covers practically any damage that is caused to the vessel while undergoing construction or repair. Or conversion.

Q. I believe there is product liability—that was the last type?

A. Product liability insurance is a form of insurance that covers us against claims for property damage or claims for personal injuries that arise out of events occurring after we have delivered the product, whether it be a repaired ship, reconverted ship, a newly-constructed ship, [fol. 184] or any type of industrial work that we do. After we have delivered the product to the owner—

Q. Mr. Costello—

A. That insurance does not apply while our work is being performed.

Q. These various types of insurance are insured with what companies?

A. Lloyds, London, and the companies comprising the Institute of London Underwriters.

Q. That is an English corporation?

A. That is correct.

Q. How are these contracts of insurance made?

A. When I say it is correct, when I say it is an English corporation, I actually do not know. But it is a group of English companies.

Q. As I understand it, the actual transactions between

Todd and Lloyds of London are negotiated through three brokerage houses?

A. That is correct.

Q. What are those brokerage houses?

A. Johnson and Higgins, Marsh & McLennan, Inc., and Griswold and Company.

[fol. 185] Q. They located here in New York City?

A. All in New York.

Q. Could you tell us, very briefly, what is their function?

A. Their function as insurance brokers is to represent us in arranging insurance on the broadest form of coverage possible at the lowest rate possible.

Q. Mr. Costello, Lloyds of London, then, has the insurance on the Todd risks at the plant in Galveston and Houston. Has that insurance company had those risks since the time that Todd entered into business in the State of Texas?

A. Yes. With respect to those forms of coverage that we were carrying at a date as early as that.

Q. Mr. Costello, I am just asking generally here, and it may require a more or less lengthy discussion by you of some insurance procedures. But I just want to know how it came about that Todd Shipyards Corporation took insurance with Lloyds of London.

A. Because it was recommended by our brokers.

Q. In other words, you had had insurance with another company before this recommendation by your brokers; is that correct?

[fol. 186] A. That is correct, and in some cases, as a matter of fact, London only carried part of the insurance.

Q. What is the arrangement—you may not know this, but I am just asking generally—what is the arrangement between an insurance company and the brokerage house that a broker would recommend one company over another company to one of their clients?

A. I would assume that the only reason they would recommend one company over another might be one of three reasons. Better coverage, lower rates, or more reputable underwriter.

Q. In other words, any solicitation that might have been made by Lloyds of London was made through one of their

brokerage houses to you; it wasn't a direct sort of a thing?

A. Well, we never do any direct business with the underwriters.

Q. It is always done through the others?

A. Always done through the brokers.

Q. Let me ask another general question, Mr. Costello:

Of course, the insuring company is interested in knowing about the risks that they are about to insure and how do [fol. 187] you furnish or how do they learn about data about the desirability of insuring these risks? Do they send someone down to Texas or do you submit something to them, or what?

A. We give to the broker the particulars of the risks and he in turn arranges the insurance with the underwriters. As to prior inspection, I can only recall—taking the last 25 years, one occasion when the underwriters inspected the risk.

Q. In other words, it is just not a practice of the business to inspect the risks before issuing insurance on this type of property?

A. That is right. I don't say that happens with all insurance, but it does definitely happen in our case. And this instance I speak of was not in connection with the writing of insurance. We already had the insurance and had been arranging it with them for years. But they just decided they would like to make a general inspection of the dry docks.

Q. Assume that you have a risk that you wish to insure in Texas. Does the Texas office notify Johnson & Higgins, or do they notify you that they want to take out such insurance on this, or how is that carried through?

[fol. 188] A. The Texas offices do not determine whether or not something should be insured. They do acquaint us with perhaps some particular risk that might be coming up differing from these types of insurance that I mentioned.

For example, they may have a unique type of job where they are not sure whether or not it should be brought to our attention, and in the interest of making certain that we can view the insurance phase of it, they bring it to our attention.

Q. In other words, they just correspond with you about the desirability or the possibility of some need for it?

A. It is possibly that we may wish to consider insuring something.

Q. In other words, your New York office, then, has the first and the ultimate decision on whether or not to insure?

A. That is correct.

Q. When you do insure a particular risk, how are the Texas offices notified that this risk is being protected with insurance?

A. Speaking of these types of insurance that I have listed, both Texas offices know that we maintain those as [fol. 189] a matter of company policy. And each year when they come up for renewal, we renew them here and then advise the plant that we have renewed them.

Q. In other words, they are renewed here in New York City; Texas offices don't have anything to do with determining whether or not they are going to be renewed?

A. That's right.

Q. Switching on to the claims section, I am sure that in a business as large as your own, there are many possibilities and many occurrences that you have an occasion to collect on this insurance; otherwise, you wouldn't carry so much?

A. That's right.

Q. Now I would like, if you would, to describe for me the process of when a claim or when a loss occurs in the Texas office, just how is it processed to you here in New York? What is the procedure?

A. They report to me by memorandum or damage report or telephone, depending on the urgency of getting through to me, that a damage has occurred.

If it is a damage against which we maintain insurance, we notify them again by telephone or memorandum that it is covered by insurance and what arrangements we [fol. 190] have made in the way of notifying underwriters in order to have the underwriters appoint a representative to inspect the damage and agree upon the cost of repairing it.

Q. Excuse me right there, Mr. Costello:

Do these underwriters maintain an office, a local office in Texas to inspect this damage to recommend whether or not it is going to be paid, or how is that done?

A. These underwriters do not have any office in Texas.

Q. How do they get this loss inspected, by what means?

A. In most cases depending upon the type of insurance, but in the majority of coverages listed here, they designate the London Salvage Association to represent them.

Q. How would you describe the London Salvage Association? What type of organization is that?

A. It is an English corporation who has for years been appointed by the English underwriters to represent them at damage surveys. They issue a bill for their services to the assured, who pays the bill.

Q. Then going back to your procedures, in notification of [fol. 191] when there is a loss, does the Galveston office correspond to the insurance brokerage office here in New York, informing them of a claim?

A. No.

Q. They do not?

A. They do not?

Q. And going through some of the correspondence a while ago I noticed that there were letters, at least with the signature, Todd Shipyards (Galveston), in parentheses, addressed to one of various brokers here in New York City. Would you explain what they are?

A. In all of my correspondence on insurance I have always used the division to which the insurance applies. That is done primarily for our own purpose in clarifying.

Q. You sign your name?

A. I sign my name; that is correct.

Q. And the Salvage Association in Texas makes an estimate or a survey of the damage; then do they correspond with you or with the brokerage about this being paid? How is that handled?

A. When they and we agree on what a proper price for repairing a damage is—

Q. Excuse me, Mr. Costello; just a minute. You say [fol. 192] they and we. Does we mean the New York office or the plant?

A. The plant; a representative of the plant.

Q. They will negotiate about the loss and the amount that is to be paid?

A. No. London Salvage Association has no authority to negotiate on anything other than what a fair price is for repairs of the damage. They do not adjust losses.

Q. I see. But your local plant in Texas would assist them in arriving at a figure of what a fair figure for the loss would be?

A. That is the usual practice. That is a fair figure for repairing a damage.

Q. Right?

A. Yes.

Q. At that time, what happens?

A. After that the Salvage Association issues its report to us which we, in turn, send through to our brokers, because underwriters will never start adjusting a claim until they have that report in front of them. When we have completed the repairs, we submit our bill in that amount, knowing in all cases that thereafter the amount of the bill will be subject to change in the adjustment of the loss.

[fol. 193] Q. Have any of these bills ever been turned down?

A. Yes, we have twelve cases among this group wherein the amount of our claim was either subsequently reduced or the entire claim rejected.

Q. In a situation where the insurer decides to either reduce the amount of the claim or to reject it entirely, what is their procedure then? Do they send someone else down to the local plant, or get in touch with another estimate group in there, or how do they handle it?

A. What happens is this? Our brokers, Johnson & Higgins, who are the adjusters and recognized as such by the underwriters, will write us and say, "This particular item doesn't appear to come under the policy." Or, "We don't think this item is collectible." And in some of those cases we recognize their right and agree to the withdrawal of the item. In other cases we don't agree that they are correct and the claim goes forward to the underwriters, who then have the privilege of raising the question, which

Johnson & Higgins or the other broker have previously indicated would be a question.

Q. When it is determined that you are or are not going to be reimbursed by the insurance company, you then communicate with the local plant?

[fol. 194] A. That is right, and tell them that a certain portion of the bill cannot be collected.

Q. Let me direct a question or two about the builders risk insurance:

If I am correct in recalling what you said generally in the definition of that type of insurance, that covers all repair work or construction work while a particular ship is in one of your plants being constructed or repaired; is that correct?

A. That is correct. If it is a ship, naturally if it is a ship on which we have arranged that type of insurance.

Q. Assume that a particular ship is coming into one of your plants in Texas. How does this office, and how does the insurance brokerage, how are they notified that this type of insurance is desired?

A. The plant notifies us that a vessel is due to arrive or has just arrived. This is not always the case. There are many cases when we in New York, before a quotation is put in on a ship repair job or a construction job, that there is going to be builders risk insurance either required by the provisions of the contract, that is specifically [fol. 195] required by the provisions of the contract, or where the provisions of the contract are such that that form of insurance is necessary to protect ourselves.

In other cases the plant notifies us that a vessel is coming in and we review the specifications or contract and determine whether builders risk is necessary. We then proceed with the arrangement of it.

Q. At the same time does the local plant notify the brokerage house that a certain ship is coming in and the people that own the ship desire this builders risk insurance?

A. No, at no time.

Q. In other words, the letter that I saw in the folder, was it the same type where you address a letter to the

brokerage house and sign "Galveston Division," the same type procedure that you follow in the others?

A. That is right. That I have always done for the purpose of identifying the plant concerned with the insurance we are arranging.

Q. And the brokerage house secures insurance or coverage from the underwriter, do they not, and then confirm insurance with the Texas plant?

A. No, at no time.

Q. At no time?

[fol. 196] A. That's right.

Mr. Shannon: Off the record.

(Discussion off the record.)

By Mr. Shannon:

Q. Mr. Costello, from what office are the premiums paid on these policies?

A. They are being paid from New York.

Q. These policies extend for a year's duration, is that correct, as a general rule?

A. Yes, that is correct, except, rather with the exception of the builders risk insurance, and the period there is from the time we receive the first material for the vessel until we deliver the vessel.

Q. About each year when the length of coverage is about to terminate, how do you determine whether or not this coverage by a particular underwriter is to be continued or not? Would you give us the process?

A. I follow the formula about a month and a half before the expiration of addressing a letter to our vice president in charge of finance here in New York, calling his attention to the policies that are expiring during that particular month, and asking if it is in order to proceed with the renewal and also asking if any change in brokers is contemplated. Then following his instructions I, therefore, proceed with the renewal arrangements.

Q. Do the insurance contracts or policies themselves, are they sent to the local plant offices?

A. No, they come to the New York office.

Q. Is a copy sent?

A. It is our custom in the case of a number of the insurances to send the plant a copy of the policy.

Q. The plant does have a copy of the policy?

A. Yes; or copy of the policy form, depending on the particular insurance.

Q. We were speaking a minute ago of the premiums on this policy. How are these premiums paid, quarterly or annually?

A. No, annually in advance. Again, with the exception of builders risk insurance, because of the fact that part of that premium is never billed to us until after the vessel has been delivered.

Q. I believe it was your statement a minute ago that this office in New York mails the drafts directly to the broker or to the underwriter, or how is that done?

A. That is our practice.

[fol. 198] Mr. Hill: To the broker.

A. To the broker. Bills are all by the broker, not by the underwriters.

Q. In case there has been a loss and the underwriter decides to pay the loss, where is the check sent, or draft sent, what office?

A. One Broadway; here in New York.

Q. Then you notify the local plant people to go ahead and repair the damaged object?

A. Yes, although in most cases it has been repaired before the loss is paid.

Mr. Shannon: Off the record.

(Discussion off the record.)

Q. Mr. Costello, this is a general question, but I would like to know besides those things that we have discussed this morning, in reference to insurance matters, are there any other transactions that are carried on from the Texas plant offices directly with the brokerage house here in New York? I say any other. Are there any?

A. No.

Q. There are none whatsoever?

A. No.

Mr. Shannon: That is all the questions I have at this [fol. 199] time, Mr. Costello.

Mr. Hill: I have some questions.

Cross examination.

By Mr. Hill:

Q. Mr. Costello, you said, or I think you said, that Todd was domiciled and had its principal office and place of business in the State of New York; is that correct?

A. That's right.

Q. With respect to these coverages which are in dispute in this litigation, the types of policies which you mentioned, have we had any history of coverages with these underwriters antedating this Texas statute, taxing the premiums?

A. Yes. Do you mean just with respect to the Galveston yards, Mr. Hill, or corporationwise?

Q. With respect to Galveston and Houston, this question.

A. Yes, we have. And in the case of the Galveston plant, it went back as far as 1934.

Q. That is for each of these coverages that we are talking about in this lawsuit?

A. With respect to the answers, with respect to those of these coverages that we carried, back that far.

[fol. 200] Q. As we picked up additional coverages, were they placed with the London underwriters?

A. From their inception.

Q. And the inception of all of those policies was prior, we will say, to 1955?

A. Yes.

Q. Mr. Costello, how long have you been with Todd Shipyards Corporation?

A. November 3, 1919.

Q. How long have you been in the insurance department, Mr. Costello?

A. Since 1922.

Q. How long have you been the manager of the insurance department?

A. Since 1940.

Q. Previous to 1940, what was your position in the insurance department?

A. General assistant to the insurance manager.

Q. So since 1940 you have handled our insurance of all types from the office here?

A. That is correct.

Q. You placed all of the types of insurance that you talked about here, the whole list of twelve?

[fol. 201] A. That is correct, yes.

Q. And you have adjusted all claims that have arisen under those policies?

A. That is right.

Q. And you have adjusted them from New York?

A. Yes.

Q. And in New York?

A. Correct.

Q. As far as you know, Ed, the insurers, the Lloyds of London, is not admitted to do business in Texas, is that correct?

A. I don't know that of my own knowledge, Mr. Hill. I would assume not, but I don't know of my own knowledge.

Q. Do you know whether they have agents or offices in Texas?

A. They do not have in Texas.

Q. I would just like to go over the method of handling these claims. Mr. Costello, you said that when a claim originates in one of the plants, you are notified in some manner by memorandum, T.W.X., or telephone call, depending on its urgency?

A. Yes.

Q. When you get the notification of a claim, what do [fol. 202] you do at that point? Do you notify the brokers?

A. Well, we get the notification, Mr. Hill, of a damage rather than a claim.

Q. Then is it up to you to determine whether or not this is the type of damage that is covered by insurance?

A. That is right.

Q. And assuming that the damage is in your opinion covered by insurance, what do you do next?

A. We then take the next step in having underwriters' representatives appointed to inspect the damage and agree upon a repair figure. That for purposes of expediting or enabling us to go ahead with the repair work.

Q. When the representative of the underwriter has agreed on the extent of the damage and the cost to repair it, does he have anything further to do with the adjustment of the claim?

A. None whatsoever.

Q. In his report, is there any notification of this fact?

A. Yes, I would think so; because all of the reports have as a concluding paragraph that the agreement on price is entirely without prejudice and subject to the terms and conditions of the policy.

[fol. 203] Q. And at that point does he drop out of this picture?

A. Completely.

Q. After you have his report, I understood you to say that you submitted it to the broker here.

A. That is right.

Q. Together with a bill for the amount of damages?

A. Which may be done simultaneously or at a different date, depending on when each document comes to me.

Q. And from that point on the broker acts as an adjuster for the underwriter; is that correct?

A. That is correct.

Q. The claim, with the approval of the broker, is submitted by him, where?

A. The broker submits his statement of claim bearing his stamp as average adjuster, to his London correspondent, who, in turn, submits it to the underwriters.

Q. Having been approved by the agent, is there ever any argument then with the underwriter as to whether or not the claim is within the policy terms and the amount is satisfactory?

A. Yes.

Q. So correspondence ensues between you and the broker [fol. 204] then?

A. That is correct.

Q. With respect to the amount of the claim or whether or not it's covered by policy terms?

A. Correct.

Q. This is eventually settled either by the rejection of the claim or the reduction of the claim; and in the event of rejection, you either agree or don't?

A. Right.

Q. In the event of a reduction, you either agree or don't?

A. Right.

Q. Assuming that you agree that the claim may be reduced, where is the payment made?

A. To the office here at 1 Broadway in New York.

Q. Assume that there is no dispute as to the validity of the claim; where is the payment made?

A. One Broadway, New York.

Q. And the procedure generally is that you submit it to the broker, and the broker submits it to the underwriter in London?

A. Right.

Q. The claim is adjusted, and the proceeds are trans-[fol. 205] mitted to the Todd Shipyards Corporation at One Broadway in New York City?

A. That's right, Mr. Hill.

Mr. Hill: Off the record.

(Discussion off the record.)

Mr. Hill: On the record.

Mr. Shannon, if it is satisfactory to you, I will ask Mr. Costello to hand to you copies of the policies involved in the litigation, and he will describe them briefly for the record. It being understood at this time that they are not being introduced in evidence, but that they are handed to you for your information with Mr. Costello's assurance that the policies, if not for the year, current year, are in exactly the same form as those for the current year.

Mr. Shannon: It is agreeable with me.

By Mr. Hill:

Q. All right, Mr. Costello, suppose you start.

A. The first of the policies are those covering Todd-owned dry docks located in the State of Texas and apply for the policy year of June 6, 1956 to June 6, 1957.

The policies for the years of 1957 to 1958, 1958 to 1959, [fol. 206] and 1959 to 1960 are not in the possession of Todd Shipyards Corporation at the present time. Inasmuch as they are in the hands of underwriters in London for the collection or for the payment of outstanding claims.

The terms and conditions of the policy for the last three years, however, are identical with those contained in the policies for the year June 6, 1956 to June 6, 1957.

Mr. Shannon: All right.

A. The next is hull and machinery insurance on leased Navy dry dock number A.F.D.M.-1, for the policy year of September 13, 1959 through September 13, 1960.

The policy covering this dry dock for the preceding years of September 13, 1957 to September 13, 1958 and September 13, 1958 to September 13, 1959, were written in identically the same form as the policies covering the year of September 13, 1959 to September 13, 1960.

Going back to that first item, which I think was hull and machinery company-owned dry docks, the policy number is 542-MD9350. And that will be policies. There are a number of them, but they all bear the same number.

Mr. Shannon: All right.

[fol. 207] A. One relating to hull and machinery insurance on the leased Navy dry dock. I should say the ones relating to. They bear policy number 542-HD3103 (handing documents to Mr. Shannon).

The next policies, number 59/BH468/JY. Do we need to name the insurance companies? These cover the piers and bulkheads at the Texas plants for the period of May 16, 1959 to May 16, 1960.

Against the risks of collision, flood, subsidence and collapse: the policies covering these same risks for the years of May 16, 1957 to May 16, 1958, and May 16, 1958 to May 16, 1959 contain the identical terms and conditions as those

set forth in the enclosed policies, for the year of May 16, 1959 to May 16, 1960 (handing documents to Mr. Shannon).

The next is pro forma copy of policies number 576 89514 covering industrial work property damage insurance for the year of September 30, 1958 to September 30, 1959. The original of these policies is presently with underwriters in London in connection with the payment of an outstanding loss. The policies covering the same risk for the years of September 30, 1957 to September 30, 1958, and September 30, 1959 to September 30, 1960, are or will be identical in [fol. 208] terms and conditions with the pro forma policies for the year of September 30, 1958 to September 30, 1959 (handing documents to Mr. Shannon).

The next policy is number 542/59/137084, and 542 59/137085, covering excess product liability insurance for the policy year of May 1, 1959 to May 1, 1960. The policies covering this same risk for the years of May 1, 1958 to May 1, 1959 are identical in terms and conditions with the policies covering the year of May 1, 1959 and May 1, 1960.

In this case we have a primary excess and an excess of that.

These are copies of both (handing documents to Mr. Shannon).

Policies number 576/91100, covering builders risk insurance on the S.S. AZTECA for the period of December 3, 1958 to December 23, 1958. All other policies of builders risk, copies of which I am handing to Mr. Shannon, contain the same terms and conditions as this policy I have described, except that they differ as to the name of the ship, the period covered and the premium paid therefor and the extent of the coverage.

In some cases we don't have the policies, but pro forma [fol. 209] copies, which I presume will serve the purpose.

Mr. Shannon: That will be all right.

A. These copies I am handing you cover the following vessels: S.S. ATZCAPOTZALCO; S.S. GENERAL LAZARO CARDENAS; S.S. VERA CRUZ; S.S. POTRERO DELLANO II.

Hull number 180; hull numbers 185 to 199. Hull numbers 181 and 182. Hull number 184. Hull number 213.

Hull number 183. Hull number 215. Hull number 204. Hulls numbers 238 and 239. Hull number 240. Hull number 179. Hulls numbers 202 and 203. Hull number 216. Hull number 217. Hulls numbers 206, 207 and 208. Hull number 209 (handing documents to Mr. Shannon).

All of these policies are written with Johnson & Higgins, Marsh and McLennon, Inc., or Griswold and Company. And the insurers in all cases are Lloyds, London and the Institute of London Underwriters.

Mr. Shannon: That is all I have.

Mr. Hill: That is all I have.

The Witness: This is true with respect to all of the policies with the exceptions of excess products liability insurance, which coverage is arranged for us by the C. R. Black, Jr., Corporation of New York, through Hogg, Robinson and Kapell-Cure (Canada), Ltd., of Toronto, Canada.

(Whereupon, the above deposition was closed.)

[fol. 210]

Certificate of Notary

I, Harry Kernes, the officer before whom the foregoing deposition was taken, do hereby certify that the witness Edward W. Costello, whose testimony appears in the foregoing deposition, was duly sworn by me, that I took such testimony by stenotype, and that said deposition is a true record of the proceedings upon said deposition and of the testimony given by said witness; that I am neither attorney nor counsel for, nor related to or employed by any of the parties to the action in which this deposition is taken, and further that I am not a relative or employee of any attorney or counsel employed by the parties hereto, or financially or otherwise interested in the event of the aforesaid proceeding.

In Witness Whereof, I have hereunto set my hand and seal this day of November, 1959.

Harry Kernes, Notary Public.

[fol. 214]

Book 190

IN THE DISTRICT COURT OF TRAVIS COUNTY, TEXAS

53RD JUDICIAL DISTRICT

No. 112,081

TODD SHIPYARDS CORPORATION,

VS.

STATE BOARD OF INSURANCE, et al.

JUDGMENT—February 8, 1960

On This the 2nd day of February, 1960, came on to be heard in regular order the above entitled and numbered cause, in which Todd Shipyards Corporation, a New York corporation, is Plaintiff and the State Board of Insurance, a body politic duly created and existing under and by virtue of the laws of the State of Texas, Penn J. Jackson, individually and as a member of the State Board of Insurance, Robert W. Strain, individually and as a member of the State Board of Insurance, J. P. Gibbs, individually and as a member of the State Board of Insurance, William A. Harrison, Commissioner of Insurance, Will Wilson, Attorney General of the State of Texas, Robert S. Calvert, Comptroller of Public Accounts of the State of Texas, and Jesse James, Treasurer of the State of Texas, and each of them, are Defendants, when came each of the parties of record and announced ready for trial, whereupon the Plaintiff advised the court that David B. Irons, a Defendant because he was a member of the State Board of Insurance when this case was filed, was no longer a member of the State Board of Insurance and, therefore, the Plaintiff moved to dismiss the said Defendant, David B. Irons, and in Plaintiff's Eighth Amended Original Petition, Plaintiff joined his successor, J. P. Gibbs as Defendant, and trial by jury being waived by each and all of the parties, the court pro-

ceeded and heard the pleadings, the evidence and the argument of counsel, and after being fully apprised is of the opinion and finds that the law and the facts are with the Plaintiff, Todd Shipyards Corporation, and that Plaintiff should recover the sum of \$20,605.53 of and from the State [fol. 215] Board of Insurance and that Texas Insurance Code, Article 21.38(2)(c) is unconstitutional and void as applied to the insurance premiums described in the Plaintiff's Eighth Amended Original Petition and the taxes unlawfully exacted from Plaintiff.

It Is, Therefore, Ordered, Adjudged and Decreed by the Court that Plaintiff, Todd Shipyards Corporation, do have and recover of and from the State Board of Insurance, a body politic duly created and existing under the laws of the State of Texas, and the members of such Board in their representative capacities, Penn J. Jackson, Robert W. Strain and J. P. Gibbs, the sum of \$20,605.53 together with the pro-rata interest earned thereon while held in suspense in accordance with the provisions of Texas Revised Civil Statutes, Article 7057b.

It Is Further Ordered, Adjudged and Decreed by the Court that Jesse James, Treasurer of the State of Texas, is hereby ordered and directed to refund said \$20,605.53 together with the pro-rata interest earned thereon to Plaintiff, Todd Shipyards Corporation, by the issuance and countersigning of a Refund Warrant, in accordance with Texas Revised Civil Statutes, Article 7057b, and to take any and all other action necessary to refund said moneys to Plaintiff in accordance with Texas Revised Civil Statutes, Article 7057b.

It Is Further Ordered, Adjudged and Decreed by the Court that Robert S. Calvert, Comptroller of Public Accounts of the State of Texas, is hereby ordered and directed to write and sign such Refund Warrant, and, after such Warrant is properly charged against the suspense account, the said Robert S. Calvert, Comptroller of Public Accounts of the State of Texas, is hereby ordered and directed to deliver such Refund Warrant to Plaintiff, Todd Shipyards Corporation, and to take any other action neces-

sary to refund said moneys to Plaintiff in accordance with Texas Revised Civil Statutes, Article 7057b.

[fol. 216] It Is Further Ordered, Adjudged and Decreed by the Court that although this judgment is also against the Defendant, Will Wilson, Attorney General of the State of Texas, it is not necessary for him to take any action to accomplish the refund of the moneys unlawfully collected from the Plaintiff, and this judgment is entered against him only insofar as required by Texas Revised Civil Statute, Article 7057b.

It Is Further Ordered, Adjudged and Decreed by the Court that the Defendant, David B. Irons, should be and he is hereby dismissed without prejudice.

All costs incurred in this proceeding are taxed against the State Board of Insurance.

To the foregoing judgment of the Court, the Defendants, and each of them, duly excepted in open court and duly gave notice of appeal to the Court of Civil Appeals for the Third Supreme Judicial District, sitting at Austin, Texas.

Signed at Austin, Texas this 8th day of February, 1960.

J. Harris Gardner

Approved as to Form:

Liddell, Austin, Dawson & Huggins, By Charles R. Vickery, Jr., By Meyer W. Witt, Attorneys for Plaintiff.

Bob Eric Shannon, Assistant Attorney General, Attorney for Defendants.

[fol. 217]

[File endorsement omitted]

[fol. 219]

IN THE DISTRICT COURT OF TRAVIS COUNTY, TEXAS
 53RD JUDICIAL DISTRICT
 No. 112,081

TODD SHIPYARDS CORPORATION,

vs.

STATE BOARD OF INSURANCE, et al.

MOTION TO SEND UP ORIGINAL EXHIBITS AND PAPERS

Comes Now the plaintiff and defendant who join in this Motion that the Court order the original papers and exhibits listed below should be sent up to the Court of Civil Appeals for the Third Supreme Judicial District sitting in Austin, Texas in lieu of copies:

1. All of plaintiff's exhibits numbers 1 through 7.

Will Wilson, Attorney General of Texas, Bob E. Shannon, Assistant Attorney General.

Liddell, Austin, Dawson & Huggins, Charles R. Vickery, Jr., Attorney for Plaintiff.

IN THE DISTRICT COURT OF TRAVIS COUNTY, TEXAS
 53 JUDICIAL DISTRICT

ORDER TO SEND UP ORIGINAL EXHIBITS—March 13, 1960

The Court being of the opinion that the original papers and exhibits listed below should be sent to the Appellate Court in lieu of copies, it is accordingly ordered that the clerk cause to be enclosed in a handy container and cause to be filed in the Court of Civil Appeals for the Third Judicial District sitting in Austin, Texas at the time the statement of facts herein is filed, the following original

papers and exhibits: to wit: 1. All of plaintiff's exhibits numbers 1 through 7.

Done at Austin, Travis County, Texas, this the 13th day of March, 1960, at 11 o'clock A. M.

J. Harris Gardner, District Judge Presiding.

[File endorsement omitted]

[fol. 225] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 226]

COURT OF CIVIL APPEALS
THIRD SUPREME JUDICIAL DISTRICT
AUSTIN, TEXAS
No. 10,802

STATE BOARD OF INSURANCE et al.

vs.

TODD SHIPYARDS CORPORATION.

Appeal From 53 District Court of Travis County
Opinion by Associate Justice Hughes

JUDGMENT AND ORDER IN CONNECTION WITH NOS. 3 AND 5
OF PRAECIPE JUDGMENT—Entered November 16, 1960

This Cause came on to be heard on the transcript of the record and same being inspected, because it is the opinion of the Court that there was no error in the judgment, It is Therefore considered, adjudged and ordered that the judgment of the trial court be and same is hereby in all things affirmed; that the appellants pay all costs in this behalf expended and that this decision be certified below for observance.

[fol. 227]

IN THE COURT OF CIVIL APPEALS
 THIRD SUPREME JUDICIAL DISTRICT OF TEXAS,
 AT AUSTIN
 No. 10,802

STATE BOARD OF INSURANCE et al., Appellants,

vs.

TODD SHIPYARDS CORPORATION, Appellee.

From District Court of Travis County, 53rd Judicial District,
 No. 112,081, Honorable J. Harris Gardner, Judge.

OPINION—November 16, 1960

Todd Shipyards Corporation, appellee, sued the State Board of Insurance, its members and other state officials to recover taxes paid under protest in accordance with the provisions of Art. 7057b, V.A.C.S.

The case was tried upon stipulated facts. Judgment for appellee for the taxes paid under protest was rendered.

The sole question presented is the constitutionality of the statute under which the taxes paid by appellee were exacted. This statute is Art. 21.38, Sec. 2 (c) of the Texas Insurance Code, V.A.C.S., which we quote:

"If any person, firm, association or corporation shall purchase from an insurer not licensed in the State of Texas a policy of insurance covering risks within this State in a manner other than through an insurance agent licensed as such under the laws of the State of Texas, such person, firm, association or corporation [fol. 228] shall pay to the Board a tax of five per cent (5%) of the amount of the gross premiums paid by such insured for such insurance. Such tax shall be paid not later than thirty (30) days from the date on which such premium is paid to the unlicensed insurer."

The following material facts are taken from the stipulation of the parties.

Todd Shipyards Corporation is a New York Corporation duly licensed to do business in Texas. Since 1934 Todd has owned real and personal property located in Texas of a value in excess of \$900,000.00.

Todd has purchased insurance agreements covering Texas risks from Lloyds of London and Institute of London Underwriters of the following nature: 1. Industrial work property damage (2) Builders' risk (3) Drydocks (4) Pier and bulkhead collision (5) Product liability insurance, to the extent of the excess portion of that insurance.

Only transactions with the insurers above named are involved in this case. Each of such insurers is domiciled in London, England.

Each of the insurance agreements made the basis of the taxes involved in this suit was contracted for, delivered and paid for in New York City, New York, the domicile of Todd Shipyards Corporation.

Neither Lloyds of London nor the Institute of London Underwriters has a permit from the Texas State Board of Insurance to write insurance in Texas; neither insurer submits any statement of its condition to such Board, and the affairs of neither are subject to examination or subject to any control or supervision by such Board. Neither of such insurers has an office or agent in Texas.

Neither Lloyds of London nor the Institute of London Underwriters conducts any investigation of Texas claims in Texas, but the adjustment of losses, if, as and when occurring, are handled between Todd's agent in the New [fol. 229] York office and the agent of Lloyds of London and the Institute of London Underwriters in New York City.

Neither Lloyds of London nor the Institute of London Underwriters has ever solicited Todd's insurance business or policies within the State of Texas.

The Texas plants or offices of Todd Shipyards Corporation do not correspond directly or indirectly nor conduct any negotiations or transactions directly or indirectly with Lloyds of London or the Institute of London Underwriters but all negotiations or transactions are handled by Todd's agent, Mr. Ed Costello, in New York City with the New

York City Agents of the insurer or directly with the London office.

All decisions relative to the purchase of insurance and renewal of insurance, the extent and amount of coverage, the selection of insurers and confirmation of insurance contracts are made by Mr. Ed Costello in New York City acting for Todd Shipyards Corporation, and not in Texas.

Under these policies all losses are payable in New York City and all losses have in fact been paid in New York City. All premiums are payable in New York City and have been paid in New York City.

Todd Shipyards has its principal office, principal place of business and domicile in New York City, New York. Todd maintains and operates shipyards in New Jersey, Louisiana, Texas, California, Washington and South America.

Todd's Texas plants are located at Pelican Island in Galveston County, Texas, and on the Houston Ship Channel in Harris County, Texas. Todd duly obtained a certificate of authority to do business in Texas issued by the Secretary of State of Texas in 1934 and has maintained such certificate in good standing and has duly filed all reports and paid all taxes, fees and charges levied against Todd for the privilege of doing business as a foreign corporation in Texas.

[fol. 230] Since 1934 Todd has made large investments in real and personal properties essential to the conduct of its shipyard business which it has held and operated continuously since 1934.

Approximately 27% of Todd's volume of business was done in Texas in each of the years 1956, 1957, 1958 and 1959. The number of employees at the Texas plants varies with the amount of work, but in November, 1959, the number of employees was about 1500.

The principal type of activity performed at the Texas plants is similar to that in other plants located in other states, and the Galveston and Houston, Texas shipyards activity consists mainly of ship repair and conversion of ships from one type to another, construction of vessels, various types of metal fabrication and construction, as well as the manufacture of industrial equipment and oil burners.

Todd purchased the insurance agreements of concern here through brokers located in New York and Canada, none of whom was a licensed insurance agent under the laws of Texas.

Such policies of insurance were signed and issued in England, and they state that while actual delivery is in England that the places of delivery, at the option of the insured, may be considered to be New York City. All of such policies were accepted by Todd in New York City. Most of them were for a period of one year. All renewals were negotiated outside of Texas. No premium was paid by or from Todd's plants or offices in Texas.

Todd's New York office sends copies of all policies affecting Texas plants and risks to its Texas offices.

In the case of builders' risk insurance, Todd's Texas office notifies Mr. Ed Costello in New York, Todd's New York insurance man, that Todd has entered into a construction or repair contract. Mr. Costello then applies to one of the New York insurance brokers for builders' risk insurance coverage on that particular vessel or contract; this application letter is signed by Mr. Costello in New [fol. 231] York, an officer of the New York office, but the coverage is requested in the name of the Corporation's Texas division and identifies Texas as the place where the work is to be performed.

When a loss occurs at the Texas plants of Todd the Texas plant informs Mr. Costello at Todd's New York office by telephone or memorandum. Mr. Costello in New York then notifies in New York the New York brokerage house in New York that negotiated the insurance; the New York broker in turn appoints the London Salvage Association to prepare an estimate or "survey" of the loss. In some instances Todd's New York office notifies the London Salvage Association that a survey is requested. The Texas plant of Todd also appraises the amount of its loss. After appraisal, the London Salvage Association forwards its estimate or survey to Todd's New York office, and Todd then submits the survey to the particular insurance broker to be used in adjusting the amount of the loss. The local plant of Todd assists the London Salvage Association in arriving at a fair figure for the loss. The London Salvage

Association issues a bill to Todd Shipyards for the London Salvage Association's services, and such bill is paid in New York City by Todd Shipyards Corporation.

The adjusting of the loss is carried on by Lloyds through the insurance broker in New York and Mr. Costello in New York. The insurance broker submits its adjustment figure and recommendation to Lloyds in London and the Institute of London Underwriters for final approval. After the figure and adjustment of loss is approved, the New York office is notified by the insurance broker or the underwriter and the New York office then notifies the Texas plants that the claim will or will not be paid.

The tax levied by the State on premiums paid by Todd Shipyards Corporation on policies purchased from Lloyds of London and the Institute of London Underwriters, "un-admitted insurers," is at the rate of five per cent of the [fol. 232] gross premiums. The tax on similar premiums paid to admitted insurers and persons transacting an insurance business in the State of Texas is at rates of a maximum of 3.85% to a minimum of 1.1%, Article 21.38, Texas Insurance Code and Article 7064, V.A.C.S.

The administrative agencies of the State through which the monies collected under Sec. 2(e), *supra*, passed, treated such funds as funds derived from occupation taxes are treated.

It is the contention of appellee that Sec. 2(e), Art. 21.38, *supra*, is violative of the "due process" clauses of the Constitutions of the United States and Texas (Sec. 1, 14th Amendment, Art. 1, Sec. 19, respectively) and of the "equality and uniformity" clause of the Texas Constitution (Sees. 1 and 2, Art. 8), and the equal protection clause of the United States Constitution (Sec. 1, 14th Amendment).

We believe that invalidity and unconstitutionality of this statute is established by the opinion of the United States Supreme Court in *St. Louis Cotton Compress Company v. State of Arkansas*, 260 U.S. 346, 67 L. ed. 297, from which we quote:

"This is a suit by the state of Arkansas against a corporation of Missouri authorized to do business in Arkansas. It is brought to recover 5 per cent on the

gross premiums paid by the defendant, the plaintiff in error, for insurance upon its property in Arkansas, to companies not authorized to do business in the state. A statute of the state purports to impose a liability for this amount as a tax. Crawford & M. Dig. (1921) Sec. 9967. The answer alleged that the policies were contracted for, delivered, and paid for in St. Louis, Missouri, the domicile of the corporation, because the rates were less than those charged by companies authorized to do business in Arkansas. It also alleged that long before the taxing act was passed the defendant had made large investments in Arkansas in real and personal property essential to the conduct of its business, which it had held and operated ever since. The plaintiff demurred. The lower court overruled the demurrer, but the supreme court sustained it, holding that the statute denied to the defendant no rights guaranteed to it by the 14th Amendment. Judgment was entered for the plaintiff, and the case was brought by writ of error to this court.

"The supreme court justified the imposition as an occupation tax,—that is, as we understand it, a tax [fol. 233] upon the occupation of the defendant. But this court although bound by the construction that the supreme court may put upon the statute, is not bound by the characterization of it, so far as that characterization may bear upon the question of its constitutional effect. *St. Louis Southwestern R. Co. v. Arkansas*, 235 U. S. 350, 362, 59 L. ed. 265, 271, 35 Sup. Ct. Rep. 99. The short question is whether this so-called tax is saved because of the name given to it by the statute, when it has been decided in *Allgeyer v. Louisiana*, 165 U. S. 578, 41 L. ed. 832, 17 Sup. Ct. Rep. 427, that the imposition of a round sum, called a fine, for doing the same thing, called an offense, is invalid under the 14th Amendment. It is argued that there is a distinction because the Louisiana statute prohibits (by implication) what this statute permits. But that distinction, apart from some relatively insignificant collateral consequences, is merely in the amount of the detriment imposed upon doing the act. The name given by the

statute to the imposition is not conclusive. *Bailey v. Drezel Furniture Co.*, 259 U. S. 20, 66 L. ed. 817, 21 A.L.R. 1432, 42 Sup. Ct. Rep. 449; *Lipke v. Lederer*, 259 U. S. 557, 66 L. ed. 1061, 42 Sup. Ct. Rep. 549. In Louisiana the detriment was \$1,000. Here it is 5 per cent upon the premiums,—which is 3 per cent more than is charged for insuring in authorized companies. Each is a prohibition to the extent of the payment required. The Arkansas tax manifests no less plainly than the Louisiana fine a purpose to discourage insuring in companies that do not pay tribute to the state. This case is stronger than that of *Allgeyer* in that here no act was done within the state, whereas there a letter constituting a step in the contract was posted within the jurisdiction. It is true that the state may regulate the activities of foreign corporations within the state, but it cannot regulate or interfere with what they do outside.”

Judgment sustaining the statute was reversed.

We quote from appellants' brief their answer to this case:

“The *Allgeyer*¹ and the *St. Louis Compress* cases were decided respectively in 1896 and 1922. Since then, the authority of those cases have been questioned in subsequent opinions by the United States Supreme Court. The emphasis of the Court now has moved away from the conceptualistic theories of place of contracting [fol. 234] and performance of the contract onto the consideration of the citizen insured or the protection of the state from the incident of loss. The *Osborn* and *Hoopeston* cases,² *supra*, make it clear that the approach taken by the court to these regulatory matters has changed. As said in the *Hoopeston* case:

“In determining the power of the State to apply its own regulatory laws to insurance business activi-

¹ Cited in *St. Louis Compress Co. v. Arkansas*.

² *Osborn v. Ozlin*, 310 U. S. 53, 84 L. ed. 1074, *Hoopeston v. Cullen*, 318 U.S. 313, 87 L. ed. 777.

ties, the question in the earlier cases became involved by conceptualistic discussion of theories of the place of contracting or performance. More recently it has been recognized that a state may have substantial interests in the business of insurance of its people or property regardless of those isolated factors. This interest may be measured by highly realistic consideration such as the protection of a citizen insured or the protection of a state from the incidents of loss

"The Court continued:

"The actual physical signing of the contracts may be only one element of a broad range of business activities. Business may be done in a state although those doing the business are scrupulously careful to see that not a single contract is ever signed within that state's boundaries. Important as the execution of a written contract may be, it is ordinarily but an intermediate step serving to tie up prior business negotiations with future consequences which themselves are the real object of the business transaction.

" . . . as the analysis of those opinions clearly indicates, the Allgeyer line of decisions cannot be permitted to control cases such as this, where the public policy of the state is clear, the insured interest is located in this state and there are many points of contact between the insurer and the property in the state."

Neither the Cotton Compress case nor the Allgeyer case has been overruled. For that matter, the Court expressly declined to overrule such cases in *Compania Gen. De Tabacos v. Collector of Int. Rev.*, 275 U. S. 87, 72 L. ed. 177.

We are confident that the Supreme Court of the United States, enlightened by its own criticism of the Allgeyer and [fol. 235] Cotton Compress cases, will, upon proper application, re-examine those cases and pronounce a decision sustaining the Legislature of Texas in enacting this statute for the protection of its citizens in a field subject to rigid regulation by the State. Until such time, however, it is our

duty to follow those cases. This we do, and affirm the judgment of the Trial Court.

Robert G. Hughes, Associate Justice.

Affirmed.

Filed: November 16, 1960

[fol. 237]

IN THE COURT OF CIVIL APPEALS
FOR THE THIRD SUPREME JUDICIAL DISTRICT

SITTING IN AUSTIN

No. 10802

STATE OF TEXAS

—v.—

TODD SHIPYARDS CORPORATION

APPELLANTS' MOTION FOR REHEARING—November 17, 1960

To the Honorable Court:

Now Comes the State of Texas and the other appellants in the above numbered and entitled cause, and respectfully move the Court to set aside the judgment of this Court, rendered on the 16th day of November, 1960, affirming the trial court's judgment, and to grant them a rehearing and reverse and render the trial court's judgment, and would say therefor:

1. The Court of Civil Appeals erred in holding that Article 21.38, Sec. 2, subsection (2), of the Texas Insurance Code is unconstitutional as a violation of due process, Sec. 1 of the 14th Amendment of the United States Constitution.

2. The Court of Civil Appeals erred in holding that Article 21.38, Sec. 2, subsection (2), of the Texas Insurance Code is unconstitutional as a violation of due process, Section 19, Article I of the Texas Constitution.

3. The Court of Civil Appeals erred in failing to pass on and in failing to hold that Article 21.38, Sec. 2, subsection (2) of the Texas Insurance Code is constitutional and not a violation of the equal protection clause of the United States Constitution, Section 1, 14th Amendment.

4. The Court of Civil Appeals erred in failing to pass on and in failing to hold that Article 21.38, Sec. 2, subsection (2) of the Texas Insurance Code is constitutional and not a violation of the equality and uniformity clauses of the Texas Constitution, Sections 1 and 2, Article VIII.

5. The Court of Civil Appeals erred in affirming the judgment of the trial court, and in not reversing and rendering the judgment of the trial court.

Wherefore, Premises Considered, the appellants respectfully pray that this motion be granted and that the judgment of the trial court be in all things reversed and rendered as prayed for by the appellants.

Respectfully submitted,

Will Wilson, Attorney General of Texas, Fred B. Werkenthin, Assistant Attorney General, Bob E. Shannon, Assistant Attorney General, Attorneys for Appellants, Capitol Station, Austin 11, Texas.

Proof of Service (omitted in printing).

[fol. 240]

IN THE COURT OF CIVIL APPEALS
FOR THE THIRD SUPREME JUDICIAL DISTRICT
AUSTIN, TEXAS

Motion #12,371

Cause #10,802

STATE OF TEXAS

—v.—

TODD SHIPYARDS CORPORATION

Appeal from 53 District Court of Travis County

ORDER OVERRULING APPELLANT'S MOTION
FOR REHEARING—November 23, 1960

Appellant's Motion for Rehearing

Motion is submitted and overruled

[fol. 247]

IN THE SUPREME COURT OF TEXAS

STATE OF TEXAS, Petitioner

—v.—

TODD SHIPYARDS CORPORATION, Respondent.

APPLICATION FOR WRIT OF ERROR—Filed December 20, 1960

To the Honorable Supreme Court of Texas:

Now Comes the Petitioner, the State of Texas, and files
this its Application for Writ of Error, and would show
the Court the following:

Statement of Facts

Todd Shipyards Corporation brought this lawsuit to recover taxes paid under protest pursuant to Article 21.38, Section 2, Subsection (e). The Court of Civil Appeals affirmed the trial court's action in holding Article 21.38, Section 2, Subsection (e) unconstitutional. The Court of Civil Appeals in its opinion correctly sets out the statement of facts.

Statement of Jurisdiction

The Supreme Court has jurisdiction of this cause under Subsections 3, 4, and 6 of Article 1728.

[fol. 248]

Points of Error

Point I

The Court of Civil Appeals Erred in Holding That Article 21.38, Section 2, Subsection (e), of the Texas Insurance Code Is Unconstitutional as a Violation of Due Process, Section 1 of the 14th Amendment of the United States Constitution.

Point II

The Court of Civil Appeals Erred in Holding That Article 21.38, Section 2, Subsection (e), of the Texas Insurance Code Is Unconstitutional as a Violation of Due Process, Section 19, Article I of the Texas Constitution.

Point III

The Court of Civil Appeals Erred in Failing to Pass on and in Failing to Hold That Article 21.38, Section 2, Subsection (e) of the Texas Insurance Code Is Constitutional and Not a Violation of the Equal Protection Clause of the United States Constitution, Section 1, 14th Amendment.

Point IV

The Court of Civil Appeals Erred in Failing to Pass on and in Failing to Hold That Article 21.38, Section 2, Subsection (e) of the Texas Insurance Code Is Constitutional

and Not a Violation of the Equality and Uniformity Clauses of the Texas Constitution, Sections 1 and 2, Article VIII.

Point V

The Court of Civil Appeals Erred in Affirming the Judgment of the Trial Court and in Not Reversing and Rendering the Judgment of the Trial Court.

[fol. 249]

Argument

Point I (Restated)

The Court of Civil Appeals Erred in Holding That Article 21.38, Section 2, Subsection (e), of the Texas Insurance Code Is Unconstitutional as a Violation of Due Process, Section 1 of the 14th Amendment of the United States Constitution.

Point II (Restated)

The Court of Civil Appeals Erred in Holding That Article 21.38, Section 2, Subsection (e) of the Texas Insurance Code Is Unconstitutional as a Violation of Due Process, Section 19, Article I of the Texas Constitution.

The Petitioner's first two points of error will be discussed here because, fundamentally, the same issues are involved. In this connection, it is observed that it has been held that Article I, Section 19 of the Texas Constitution restricts the powers of the Legislature to the same extent as the due process clause of Section 1 of the 14th Amendment of the United States Constitution. *Mellinger v. City of Houston*, 68 Tex. 37, 3 S. W. 249.

The insurance business has long known state regulation and Article 21.38 is only one of many measures regulating buying and selling of insurance. The primary concern of this legislation was for the protection of resident purchasers who invest in policies of companies which have not established their responsibility, financially or otherwise. The preregulated era in Texas insurance history is well known. During that period many foreign and domestic companies used every technical device and, at times, resorted to trickery and fraud to defeat and keep from pay-

[fol. 250] ing their bona fide claims and losses. Insurance companies were organized without adequate financial backing to insure their successful operation.

Texas is not singular in its regulatory control and supervision over insurance. Over the country, states early created insurance departments with duties of requiring all insurance companies doing business there to make annual financial reports and requiring examinations of the companies' books at the department's will, and authorizing them to wind up insolvent insurance companies. These states have legislation which requires foreign insurance companies doing business in the state to deposit sufficient sums to secure to resident policyholders the performance of all contracts made with them. In some states, insurance companies cannot operate unless they possess a certain amount of capital and are prohibited from accepting a single risk exceeding a specified percentage of that capital. Other statutes are designed to regulate the form of the policies to prevent the insured from being trapped by conditions of forfeitures being set out in the policy in such a way so as to escape the attention of the policyholder. Policy rates are also prescribed. Other measures, of the type of Article 21.38, regulate litigation against the insurer in order to make the remedy under this contract speedy and efficient.

Although prior to Article 21.38 the Legislature had enacted comprehensive measures designed to regulate, control, and supervise the insurance business so as to protect resident insureds, a special problem still existed: That situation where an insurance company, not incorporated in Texas, nor having a certificate of authority to do business here, but which in some way or other was still placing insurance with the residents of this State *on risks located in this State*. Such unauthorized companies in no way subjected themselves to the supervision and control of the State Board of Insurance. Such a leak in the regulatory network worked a detriment on resident policyholders since the worth of their insurance contracts purchased from unauthorized insurers was reduced to the level of the value of insurance policies in the least regulated states or countries in which that particular insurance com-

pany operated. The policy of an unregulated company might be practically worthless. As long as this leak existed, the effectiveness of the other regulatory measures was crippled. This was particularly so in fire insurance rates. One problem presented to a resident policyholder of an unauthorized company was that he, in many instances, would have to resort to bringing his lawsuit on the insurance contract in a distant forum.

Article 21.38 has two purposes, set out in the purpose clause:

(1) To regulate the placing of insurance by resident insureds with unauthorized insurers

(2) To subject those unauthorized insurers to the jurisdiction of Texas in suits by the resident insureds

Although the second purpose forms an integral part of Article 21.38, we are primarily concerned with the first purpose. In Section 2 of Article 21.38, the mode of regulation is set out. Subsections (a), (b) and (c) of Section 2 provide for licensing of certain insurance agents to sell insurance of unauthorized insurers to resident insureds who show by affidavit that they are unable to procure from licensed companies the full amount of insurance required [fol. 252] for the particular risk. The agent is required to pay a 5% tax on the gross premiums paid by the insured on the policies of the unauthorized insurer.

Subsection (c) sets out an alternative route for the resident insured to buy insurance from an unauthorized insurer: he may purchase insurance of an unauthorized insurer from one other than a licensed agent, but the insured must pay a 5% tax on the gross premiums paid.

Subsection (c) of Section 2 of Article 21.38, as it can be seen, is concerned with the *resident* owners of Texas risks purchasing insurance from unauthorized insurers. It confines itself to risks located in Texas and which are owned by or are the responsibility of residents. It also confines itself to unauthorized insurers, i.e., insurers who are not licensed to do business in this State. This means it could apply to insurance companies incorporated in other countries, companies incorporated in other states in this country,

and companies incorporated in this State but which have not complied with the laws of this State in some respect so as not to entitle them to a certificate to do business here. A reading of Section 2 reveals that the tax is placed upon the *resident purchaser of the insurance*, covering property or risks in this State, and so it is readily seen then that the tax is *not* placed on the *unauthorized* insurer, which in this case is domiciled in England. There is no question in this case of the State attempting to regulate or tax the activities of the unauthorized insurance company. The question concerns the power of Texas over insured property located here.

The various states have long exercised powers over property located within their respective jurisdictions. As said in *Hoopeston v. Cullen*, 318 U. S. 313 (1942):

[fol. 253] "A state may make flood control, quarantine, conservation and zoning regulations affecting the property within its bounds. It is a source of law for the forms of conveyances, the nature of covenants, future interest and easements, for the construction of wills, trusts and mortgages, and for many other legal principles affecting property interests. Contracts made in other states may remain subject to the law of the State of the situs of the property, particularly in respect to immoveables. *There is no more reason to bar the state from authority over the insurance of the property within it than to exclude it from control of all the property interests mentioned.*" (Emphasis added.)

The State has a valid interest in the use of properties located within its boundaries because it is called upon to extend police protection to those properties. In exchange for the protection afforded by the State, it may and does restrict the use of those properties in many ways. This interest in the use of property extends in some instances to the supervision and regulation of the kind and quantity of insurance coverage on that property. For example, employers of certain classes are required to purchase workmen's compensation insurances, or in the case of accident, experience certain consequences. More closely in point is the Motor Vehicle Responsibility Law requiring all

owners of motor vehicles, after an accident, to show financial responsibility before they are allowed to continue to drive on the highways. Such owners do not have to purchase insurance or show other financial responsibility, but in case of an accident, their failure to purchase insurance may cause them to suffer certain consequences imposed by law. Quoting from another case, the Texas Supreme Court has said:

"It seems clear the Legislature may require, as a condition to the right of operating a motor vehicle, the [fol. 254] procurement of insurance or the furnishing of other proof of financial responsibility." *Gillespie v. Department of Public Safety*, 152 Tex. 459, 259 S. W. 2d 177, 182, (1953) certiorari denied, 347 U. S. 433.

Then it may be seen that the State can require that owners of property, in order to use that property, purchase certain types of insurance or produce other security. The State requires in the Motor Vehicle Responsibility Law, Article 6701b, V. T. C. S., Section 19, Section 21, Section 5, that the liability insurance purchased be that of authorized insurers. If this were not so, the purpose of the financial Motor Vehicle Responsibility Law would be wrecked. The State Legislature has determined by various laws that the risks of Texas residents can be best protected by placing those risks with controlled and supervised companies, i.e., authorized companies. Subsection (e) of Section 2 of Article 21.38 does not forbid resident owners of property or risks to place insurance with unauthorized insurance companies, but, if they wish to do so, they must pay a 5% tax on the gross premiums paid to the insurance company. It can be seen that Article 21.38, by means of this levy, reduces the number of unwary residents who hold policies with unlicensed and unsupervised companies. It has long been recognized that taxation may be made the implement of the exercise of the State's police power. See *Great Atlantic & Pacific Tea Company v. Grosjean*, 301 U. S. 412 (1937).

Even though extra-territorial repercussions may ensue from the application of Subsection (e) of Section 2 of Article 21.38 to this case, it is well settled that a state may

validly regulate activities, persons, and properties within its jurisdiction despite the ensuing repercussions. The [fol. 255] propriety of the regulation is determined by its focus upon an internal problem and not by the extent of its influence.

"Some contracts made locally, affecting nothing but local affairs, may well justify a denial to other states of power to alter those contracts. But, as this case illustrates, a vast part of the business affairs of this nation does not present such simple local situations . . . As a consequence of the modern practice of conducting widespread business activities throughout the entire United States, this Court in a series of cases held that more states than one may seize hold of local activities which are part of multistate transactions and may regulate to protect interests of its own people, even though other phases of the same transactions might justify regulatory legislation in other states . . . " *Watson v. Employers Liability Corporation*, 348 U. S. 66 (1954).

"The mere fact that State action may have repercussions beyond state lines is of no judicial significance so long as the action is not within that domain which the Constitution forbids." *Osborn v. Ozlin*, 310 U. S. 53 (1940).

Involved in *Osborn v. Ozlin* was a Virginia statute which forbade contracts of insurance or surety by companies authorized to do business in Virginia except through regularly constituted and registered resident agents or agencies of such companies. Violation of the statute might entail a fine or revocation of the corporate license in Virginia. The statute was enacted to remedy this situation: The Virginia assureds could buy insurance at lower rates out of state from brokerage houses than from the local agents, and the company could save on the local agent's commissions. Thus the Virginia insurance business was being drained away to the great insurance centers, to the detriment of the local agents. The complainants had purchased their insurance out of state. The complainants objected that in affecting

the cost of the master policy Virginia intruded upon business transactions beyond its borders.

[fol. 256] The Court answered that contention:

"But the question is not whether what Virginia has done will restrict appellant's freedom of action outside Virginia by subjecting the exercise of such freedom to financial burdens. The mere fact that state action may have repercussions beyond state lines is of no judicial significance so long as the action is not within that domain which the Constitution forbids . . . Our inquiry must be much narrower. It is whether Virginia has taken hold of a matter within her power, or has reached beyond her borders to regulate a subject which was none of her concern because the Constitution has placed control elsewhere . . ."

"Virginia has not sought to prohibit the making of contracts beyond her borders. She merely claims that her interest in the risks which these contracts are designed to prevent warrants the kind of control she has here imposed. This legislation is not to be judged by abstracting an isolated contract written in New York from the organic whole of the insurance business, the effect of that business on Virginia, and Virginia's regulation of it."

" . . . Government has always had a special relation to insurance. The ways of safeguarding against the untoward manifestations of nature and other vicissitudes of life have long been withdrawn from the benefits and caprices of free competition. The state may fix insurance rates . . . ; it may regulate the compensation of agents . . . ; it may curtail drastically the area of free contract . . . States have controlled the expenses of insurance companies . . . They have also promoted insurance through savings banks; . . . In the light of all these exertions of state power it does not seem possible to doubt that the state could, if it chose, go into the insurance business . . . If the state, as to local risks, could thus preempt the field of insurance for itself, it may stay its intervention short of such a drastic step by insisting that its own residents

shall have a share in devising and safeguarding protection against its local hazards." (Cases cited have been omitted.)

As it may be noticed, the Virginia statute regulated insurance companies directly. There involved were insurance contracts made out of state. The Court held that the interest of Virginia in the domestic risks warranted the kind [fol. 257] of control she imposed. In the case at bar, the argument for the validity of Article 21.38 is much stronger than the Virginia regulation since Article 21.38 is drawn to place its burden on the *resident risk owner* and not on the unauthorized insurer. Since this is so, there is no burden on the State to show that Lloyds of London, by some act, "did business" in this State.

The rule of the *Ozlin* case, (the *Hoopston* case, and *Travelers Health Association v. Virginia*, 339 U. S. 643 (1950), make this apparent: As to the validity of a regulatory measure, it is no longer of paramount importance *where the contract of insurance was entered into*. The question becomes whether the regulating state has sufficient interest in the matter to justify the regulation. What, then, is the interest of Texas in these contracts? The intimacy of the insurance contracts in question with Texas and the interest of Texas is readily apparent from the fact that the insured is a Texas resident and the property and risks involved are located in Texas. The events which give rise to contractual obligation on the part of the insurance company to pay on policies will occur in Texas. The State or its instrumentalities will be called upon to extend its police protection in case of losses by the insured. The failure of an unauthorized insurance company to pay for large losses could cause serious economic consequences to communities in this State, with the ensuing burden on the State to supply relief measures. In case of the builder's risk insurance, at least, the persons compensated more than likely will be residents of Texas. Upon them will devolve the task of bringing suit in the event Lloyds of London denies the risk. Persons bringing suit on these risks will more than likely resort to Texas courts. In the more recent United States Supreme Court cases, the Court has em-

[fol. 258] phasized the great importance of the location of the property as a factor in justifying state's control over insurance contracts made outside the boundaries of the state. See *Osborn* and *Hoopeston* cases, *supra*, and language in *Parmalee v. Iowa State Traveling Men's Ass'n.*, 206 F. 2d 518, pp. 521 (1953). In fact, it may be said that the location of the property insured was the decisive factor in the *Hoopeston* case. See pages 318 and 319.

As noted by the *Osborn* case, *supra*, the view taken by the Court in deciding the constitutionality of this statute must not be by the process of abstracting these few isolated contracts written in New York from the organic whole of the insurance business, the effect of that business in Texas, and Texas' regulation of it. The need for Article 21.38 has already been set out—the effectiveness of the regulatory scheme of insurance in Texas was being greatly impaired by the machination of the unauthorized insurer operating in distant areas.

Some of the same issues are considered in the conflict-of-laws cases. It has been long settled that a state may constitutionally refuse to enforce an insurance contract or provision thereof even though made in another state because its enforcement would be contrary to the policy of that state. In *Watson v. Employers Liability Corporation*, 348 U. S. 66 (1954), the applicability of the Louisiana direct action law to an insurance contract made in Massachusetts was involved. The plaintiff was injured in Louisiana while using a product of the insured. The insurance company contended that since the contract involved was a Massachusetts contract which forbade the plaintiff suing directly, the Louisiana direct action statute was an invalid attempt to regulate and control activities wholly beyond Louisiana boundaries. The court held Louisiana had a valid interest [fol. 259] in the Massachusetts contract and, as such, could apply its laws to it, and that it was immaterial that other states might also have an interest in the same transaction and might also regulate it.

Even more pertinent to the case at bar is the proposition that the state, as a sanction against unauthorized insurers and for the protection of residents, have long denied to the unauthorized insurer access to their courts to

enforce its rights under the insurance contract to resident purchasers. A case in point is *American Universal Insurance Company v. Sterling*, 203 F. 2d 159 (1953). There an unauthorized insurance company brought suit against its insured in Pennsylvania for breach of the cooperation clause and subrogation agreement. The defense was that since the suit was based upon insurance contracts issued by a foreign company which had not complied with the Pennsylvania statutes such suit could not be maintained in the courts of Pennsylvania. This defense was said to be based upon Pennsylvania public policy. This insurance was written in Rhode Island and delivered to the defendant in New York. Relying on *Swing v. Munson*, 191 Pa. 582, 43 A. 342, (to determine the Pennsylvania policy), the Court determined that the contract was not of the type which could be enforced in the Pennsylvania courts. (The Court allowed the plaintiff to amend its petition on another point.) The Court says that the three facts involved in the *Swing* case were:

- (1) "The failure to comply with the Pennsylvania statute;
- (2) the Pennsylvania citizenship of the defendant;
- (3) and the location within the Commonwealth of the insured property."

[fol. 260] The Supreme Court concluded (in the *Swing* case) that the writing of the insurance contract, although accomplished in Ohio, was "the attempt of a foreign insurance company to do business in this state in violation of the laws of this state."

Interesting also is the relatively new case of *McGee v. International Life Insurance*, 355 U. S. 220 (1957). It involved the question of whether due process was violated in the service of an out-of-state corporation, and illustrates the principles guiding the Court in determining the "interest" of a state in an insurance contract to gain jurisdiction over the foreign insurance company. In determining the interest of California in the insurance contract, the Court considered: that the insurance contract

was delivered in California; the premiums were mailed from there; the insured was a resident of California; the necessity of California to provide an effective means for redress for its residents who are refused claims; the cost to the insured of bringing suit in the forum of the foreign insurance company; and the availability of witnesses in the insured's locality.

The Respondent maintains that Section 2 of Article 21.38 is unconstitutional as a tax on matters outside the jurisdiction of Texas and relies on the authority of the cases of *Allgeyer v. Louisiana*, 165 U. S. 578 (1896) and *St. Louis Cotton Compress Company v. State of Arkansas*, 260 U. S. 347 (1922). In the *Allgeyer* case, a Louisiana statute levied a thousand dollar fine on any person who by any act in Louisiana effected for himself or others insurance from an insurance company not licensed in Louisiana. The defendant, Allgeyer & Co., mailed a letter from Louisiana [fol. 261] to a New York insurance Company in New York, informing the insurance company of a shipment of one hundred bales of cotton from Louisiana which effected insurance on the cotton in accordance with an open marine policy. The Court took the view that the insurance contract involved was a New York contract and, as such, was not subject to the jurisdiction of Louisiana. The Court noted that the property to be insured, the one hundred bales of cotton, was *temporarily* within Louisiana. It is to be noted that in the case at bar, the property insured has long been located in Texas and, consequently, has long enjoyed the protection extended by the State.

Following the *Allgeyer* decision, the Court in the *St. Louis Cotton Compress* case, *supra*, invalidated an Arkansas tax placed on insurance premiums paid by Arkansas property holders to insurance companies not authorized to do business in Arkansas. The policies in question were contracted for, delivered, and paid for in St. Louis, Missouri. The reason given for holding the measure invalid seemed to have been that since the policies were contracted for outside the state, the Arkansas measure was an interference or regulation with matters outside Arkansas. The Court of Civil Appeals followed the *St. Louis Compress* case.

The *Allgeyer* and the *St. Louis Compress* cases were decided respectively in 1896 and 1922. Since then, the authority of those cases have been questioned in subsequent opinions by the United States Supreme Court. The authority of the *Allgeyer* case has been questioned to such an extent that one writer has said, "Although the *Allgeyer* case has never been overruled, it is doubtful whether the Supreme Court would reach the same result today, even upon the precise fact situation involved." (Annotation to *California Automobile Ass'n. v. Maloney*, 341 U. S. 105, (1950) appearing in 95 L. Ed. 805.) The Court of Civil [fol. 262] Appeals, though affirming the trial court's judgment, stated that:

"We are confident that the Supreme Court of the United States, enlightened by its own criticism of the *Allgeyer* and *Cotton Compress* case, will, upon proper application, re-examine those cases and pronounce a decision sustaining the Legislature of Texas in enacting this statute for the protection of its citizens in a field subject to rigid regulation by the State."

The emphasis of the United States Supreme Court now has moved away from the conceptualistic theories of place of contracting and performance of the contract onto the consideration of the citizen insured or the protection of the state from the incident of loss. The *Osborn* and *Hoopeston* cases, *supra*, make it clear that the approach taken by the Court to these regulatory matters has changed. As said in the *Hoopeston* case:

"In determining the power of the State to apply its own regulatory laws to insurance business activities, the question in the earlier cases became involved by conceptualistic discussion of theories of the place of contracting or performance. More recently it has been recognized that a state may have substantial interests in the business of insurance of its people or property regardless of those isolated factors. This interest may be measured by highly realistic consideration such as the protection of a citizen insured or the protection of a state from the incidents of loss . . ."

The Court continued:

"The actual physical signing of the contract may be only one element of a broad range of business activities. Business may be done in a state although those doing the business are scrupulously careful to see that not a single contract is ever signed within that state's boundaries. Important as the execution of a written contract may be, it is ordinarily but an intermediate step serving to tie up prior business negotiations with future consequences which themselves are the real object of the business transaction.

" . . . as the analysis of those opinions clearly indicates, the Allgeyer line of decisions cannot be permitted to control cases such as this, where the public [fol. 263] policy of the state is clear, the insured interest is located in this state and there are many points of contract between the insurer and the property in the state."

Point III (Restated)

The Court of Civil Appeals Erred in Failing to Pass on and in Failing to Hold That Article 21.38, Section 2, Subsection (e) of the Texas Insurance Code Is Constitutional and Not a Violation of the Equal Protection Clause of the United States Constitution, Section 1, 14th Amendment.

Point IV (Restated)

The Court of Civil Appeals Erred in Failing to Pass on and in Failing to Hold That Article 21.38, Section 2, Subsection (e) of the Texas Insurance Code Is Constitutional and Not a Violation and (sic) the Equality and Uniformity Clauses of the Texas Constitution, Sections 1 and 2, Article VIII.

The trial court held that Subsection (e) of Section 2, Article 21.38, was a violation of Sections 1 and 2 of Article VIII of the Texas Constitution and a denial of the equal protection clause of the 14th Amendment of the United States Constitution. The Court of Civil Appeals failed to pass on these points.

Section 1 of Article VIII reads in part as follows:

“Taxation shall be equal and uniform.”

Section 2 of Article VIII reads in part as follows:

“All occupation taxes shall be equal and uniform upon the same class of subjects within the limits of the authority levying the tax . . . ”

[fol. 264] It is well settled that the effect of the equal protection clause of the 14th Amendment of the United States Constitution and the equality and uniformity requirements of the Texas Constitution upon the taxing power of the state are substantially similar. *Hurt v. Cooper*, 130 Tex. 433, 110 S. W. 2d 896, 901 (1937). For this reason, Petitioner's Points III and IV will be discussed herein.

In the beginning, it is well to note that authorized insurance companies doing business in Texas actually carry a tax burden which is as great or perhaps greater than that imposed by Article 21.38, Section 2(e). Texas has a complete and comprehensive system of taxation with respect to insurance, irrespective of how or with whom such insurance is placed by persons residing in Texas who have risks located in Texas. Thus, Section 7064 of Vernon's Civil Statutes imposes a premium tax on all admitted companies, domestic, foreign, or alien, of 3.85% (subject to reduction, depending upon the investment portfolio of the company) on the gross premiums received from policyholders during the preceding calendar year, upon property or risks located in Texas. These tax proceeds become part of the general fund and are used to support all services, including education, furnished to persons resident and domiciled in the State of Texas.

In addition to the premium taxes which are borne by residents of Texas, there are also imposed four kinds of maintenance taxes which are likewise based on gross premiums. They are:

- [fol. 265] (1) The Fire Insurance Maintenance Tax (Article 5.49, Insurance Code);
- (2) The Casualty Insurance Maintenance Tax (Article 5.24, Insurance Code);

- (3) The Motor Vehicle Division Tax (Article 5.12, Insurance Code); and
- (4) The Workmen's Compensation Insurance Commission Tax (Article 5.68, Insurance Code).

These taxes may be assessed at rates ranging from 0.2% to 1¼%, depending upon the kind of coverage.

These taxes are used to benefit persons who are resident or domiciled in Texas by defraying the expenses of the various insurance divisions which are charged with supervising insurance, fire prevention, accident prevention, and the like, in the public interest.

These taxes alone aggregate 5% or more of the gross premiums charged, and this does not take into account various agency fees, filing fees, and other taxes and fees which are ultimately borne by policyholders who purchase coverage from admitted insurers, whether such insurers be domestic, foreign, or alien.

Should a policyholder elect to procure his insurance from unauthorized or non-admitted insurers through a surplus lines agent in the State of Texas, the agent is obligated to collect from the insured and remit to the State Board of Insurance a tax of 5% on the gross premiums charged for such coverage (Article 21.38, (2)(d)). The proceeds from this tax became part of the general fund of the State, the same as the taxes imposed upon admitted insurers. The [fol. 266] funds which are appropriated and expended are likewise used to promote and protect the best interest of all persons resident or domiciled in the State of Texas.

In 1957, Article 21.38 was amended in order to equalize the tax burden on Texas residents. The amendment placed a tax at the same rate upon any person who purchased a policy of insurance covering risks located in Texas in a manner other than through a licensed surplus lines agent. In other words, by virtue of the amendment, the tax became identical; to wit, 5% on the gross premiums charged for insurance purchased from unauthorized insurers whether the same was obtained through the intervention of a licensed Texas surplus lines agent or through the medium of an out-of-State, licensed or unlicensed broker or agent. Both the title and the body of the Act make it patent that

the purpose of the amendment was to impose a tax, and that the tax should be at the same 5% rate on the premium charged for insurance procured by residents of Texas, covering risks located within the State of Texas, irrespective of how such insurance is effected. The measure of the tax, while keyed to gross premium, is nevertheless limited to risks resident or located within the State of Texas. In this connection, Subsection (f) of Section 2 of Article 21.38 expressly provides:

“(f) If any such policy purchased from an insurer not licensed in this State, either by purchase from such insurer or through an agent licensed hereunder, shall cover risks partially within and partially without this State, the tax levied in Subdivisions (d) [i.e. the 5% tax where the coverage is procured through a surplus lines agent] and (e) above [where the coverage is procured other than through a surplus lines agent] is to be measured only by that portion of the premium paid for insurance covering risks within this State.”

Texas is thus seeking to tax only insurance effected by persons within its State, on property within its own jurisdictional confines, and is not seeking to extend its jurisdiction to risks outside the State of Texas.

So it may be seen that irrespective of whether the coverage is placed with an admitted or an unauthorized insurer, or the manner in which it is effected, the maximum rate is identical and, if not identical, the rate is preponderantly lower in the case of non-admitted insurance than it is in the case of admitted insurance.

It is well settled law that a state may classify persons and objects for the purposes of taxation. *Texas Company v. Stevens*, 100 Tex. 628, 103 S. W. 481, (1907). It is equally well settled that the equality and uniformity provisions and the equal protection clause are satisfied if the legislation meets two tests:

(1) Is the classification reasonable, or, in other words, does the classification have a proper connection with the object sought by the legislation?

(2) Within the class, does the legislation operate equally?

What is the class created by Subsection (e) of Section 2 of Article 21.38? The class created by this law is composed of any person, firm, association, or corporation who purchases insurance covering risks within this State from an unauthorized insurer. Upon this class of persons is placed a 5% tax of the gross premiums paid to the unauthorized insurer.

[fol. 268] Is this classification reasonable, i.e., does the classification have a proper connection with the object sought by the legislation? In an earlier part of this application, the purpose or object of this legislation was set out in detail and here is a brief recapitulation to show the reasonableness of this legislation.

Sharp practices of the insurance trade in the pre-regulated era are well known. Early in the legislative history of this State, enactments were passed which attempted to protect the insuring public from unscrupulous insurance tactics. At the present time, an elaborate system of laws regulate insurance companies operating in this State to insure financial stability, competent and honest management, and to insure that the policy rates and forms are reasonable and uniform. Even with an elaborate system of laws in effect, the Legislature realized that persons, associations, or corporations owning property in this State were still being sold insurance by unregulated insurers. These insurers were sometimes domestic companies which had not complied with the Texas Insurance Code. In other instances, they were insurance companies organized in other states with lax legal requirements; and in some instances, these companies were foreign companies organized in foreign countries which imposed no regulations whatsoever. When such an unauthorized company could not or would not perform its contractual obligation, the State of Texas, through the insured, would bear the economic consequences. In many instances, the person, association, or corporation purchasing from such unauthorized insurers [fol. 269] was unaware of the hazards of insuring with an unauthorized company.

For the protection of the unwary property owner seeking insurance, this law was passed. By placing a 5% tax on the gross premiums paid by the insured to the unauthorized insurer, the Legislature could at least reduce the volume of this dangerous traffic. Most property owners would buy insurance from authorized insurers, and, of course, such a deterrent as a tax was not needed in that case. It was in just this instance—purchasers of insurance from unauthorized insurers—that a tax deterrent was needed. From these persons, the class in Subsection (e) of Section 2 of Article 21.38 was created.

Within the class created by Subsection (e) of Section 2, Article 21.38, the law operates uniformly and equally upon all members of the class. The class created by this section is all persons, firms, associations, or corporations which shall purchase from unauthorized insurers insurance covering risks located within this State, and such persons, firms, associations, or corporations shall pay a 5% tax. Certainly this is an all-encompassing inclusion of all those within the class—no one so purchasing such insurance is excluded. Also, all must pay the same amount of tax—5%.

Respondent depended upon *Rouw v. Texas Citrus Commission*, 151 Tex. 182, 247 S.W. 2d 231, in the trial court. That case involved this second question: Within the class, are all members taxed equally? There the Legislature levied a tax upon persons, firms, associations, and corporations growing citrus fruit. But an exemption to the tax [fol. 270] was provided to "natural persons" growing citrus fruit. Clearly, then, all members of the class were not taxed equally. The case before this Court is clearly distinguishable from the *Rouw* case since Subsection (e), Section 2, Article 21.38, is applicable to *all* persons who purchase from unauthorized insurers.

Conclusion

For the reasons set forth in this application, the State of Texas respectfully submits that Subsection (e) of Section 2, Article 21.38, Texas Insurance Code, is a valid and constitutional measure, and that the judgment of the Court

of Civil Appeals should be reversed, and that the judgment of the District Court should be reversed, and rendered for the State of Texas.

Respectfully submitted,

Will Wilson, Attorney General of Texas; Fred B. Werkenthin, Assistant Attorney General; Bob E. Shannon, Assistant Attorney General, Counsel for Petitioner, State of Texas, Capitol Station, Austin 11, Texas.

[fol. 271] Certificate of Service (omitted in printing).

[fol. 272] Clerk's Certificate to foregoing paper (omitted in printing).

[fol. 273] [File endorsement omitted]

[fol. 274]

IN THE SUPREME COURT OF THE STATE OF TEXAS

No. A-8150

STATE BOARD OF INSURANCE, et al., Petitioners,

v.

TODD SHIPYARDS CORPORATION, Respondent.

INSTRUMENT TO CLARIFY THE IDENTITY OF PETITIONERS
—Filed December 22, 1960

To the Honorable Supreme Court of Texas:

It has come to the attention of the Petitioners that the identity of each should be more clearly disclosed, and this instrument is filed to serve that purpose.

The Respondent, Todd Shipyards Corporation, obtained, in the 53rd District Court, Travis County, Texas, judgment against Penn J. Jackson, individually and as a member of the State Board of Insurance; Robert W. Strain, individually and as a member of the State Board of In-

insurance; David Irons, individually and as a member of the State Board of Insurance (the position subsequently occupied by Joe P. Gibbs, and presently occupied by Ned Price); William A. Harrison, Commissioner of Insurance; Will Wilson, Attorney General of Texas; Robert S. Calvert, Comptroller of Public Accounts of the State of Texas; and Jesse James, Treasurer of the State of Texas.

[fol. 275] The foregoing named individuals, in their several capacities, were the Appellants in the Court of Civil Appeals in Cause No. 10802, and those same individuals, in their several capacities, are Petitioners in Cause No. A-8150, Application for Writ of Error now pending in the Supreme Court of Texas. For simplicity and brevity, the collective term "State of Texas" was used in the briefs in the Court of Civil Appeals and in the application for a writ of error now pending in the Supreme Court.

Respectfully submitted,

Will Wilson, Attorney General of Texas, Fred B. Werkenthin, Assistant Attorney General, Bob E. Shannon, Assistant Attorney General, Counsel for Petitioners, State Board of Insurance, et al., Capitol Station, Austin 11, Texas.

[fol. 276] Clerk's Certificate to foregoing paper (omitted in printing).

[fol. 277] [File endorsement omitted]

[fol. 285]

IN THE SUPREME COURT OF THE STATE OF TEXAS

No. A-8150

[Title omitted]

ANSWER TO APPLICATION FOR WRIT OF ERROR AND
RESPONDENT'S BRIEF—Filed December 30, 1960

To the Supreme Court of the State of Texas:

Respondent, Todd Shipyards Corporation, respectfully files this Answer to Petitioners' Application for Writ of

Error in order to clarify the controlling issues and authorities.

Statement of the Case

(1)

Preliminary Statement

The Court of Civil Appeals (1) affirmed the Trial Court's judgment refunding Respondent's taxes paid under protest [fol. 286] and (2) declared the unadmitted insurance tax (Article 21.38(2)(e)) an unconstitutional violation of due process.

(2)

The Issues Presented

The issues presented were correctly summarized in the Court of Civil Appeals opinion:

1. "The sole question presented is the constitutionality of the statute under which the taxes paid by appellee (Respondent) were exacted." (C.C.A. Opinion, p. 1)
2. "It is the contention of appellee (Respondent) that Sec. 2(e), Art. 21.38, supra, is violative of the 'due process' clauses of the Constitutions of the United States and Texas (Sec. I, 14th Amendment, Art. 1, Sec. 19, respectively) and of the 'equality and uniformity' clauses of the Texas Constitution (Sees. 1 and 2, Art. 8) and the equal protection clause of the United States Constitution (Sec. 1, 14th Amendment)." (C.C.A. Opinion, p. 6)

The Court of Civil Appeals condemned the tax on the due process points and did not reach nor decide the "equality" points under the Texas and United States Constitutions.

The "jugular vein" of this case is easily identified:

Are the Texas Courts Bound to Follow *St. Louis Cotton Compress Co. v. Arkansas*, 260 U.S. 346?

[fol. 287] Respondent and the lower courts answer "Yes", while Petitioner answers "No".

Statement of Points

Counter-Point No. 1

The Texas Unadmitted Insurance Tax Levied on Insurance Premiums Paid by Respondent in New York to New York Brokers Is Unconstitutional and Void Under the Due Process Clause of the Texas Constitution (Article I, Section 19) and United States Constitution (Amendment Fourteen), Because (1) the Insurance Agreements Were Made in New York, New York, (2) the Policies Were Delivered in New York, and the Premiums Were Paid in New York, (3) the London Insurers Were Not Authorized to Do Business, and Were Not Doing Business in Texas, and, Therefore, (4) the State of Texas Had No Jurisdiction to Tax the New York Contract or New York Premium Payments as Established by *St. Louis Cotton Compress Co. v. State of Arkansas*, 260 U.S. 346.

Counter-Point No. 2

The Texas Unadmitted Insurance Tax Levied on Insurance Premiums Paid by Respondent in New York to Unadmitted Insurers Is Unconstitutional and Void Under the Equality and Uniformity Clauses of the Texas Constitution, Because (1) the Unadmitted Insurance Tax Is an Arbitrary, Unreasonable and Invidious Discrimination Against Foreign Insurers and in Favor of Domestic Insurers, and (2) All Persons Paying Insurance Premiums on Policies Covering Texas Risks Are Not Taxed Equally and Uniformly, and, Therefore, the Tax Denies Equality and Uniformity as Guaranteed by the Texas Constitution, Article 8, Sections 1 and 2.

Counter-Point No. 3

The Texas Unadmitted Insurance Tax Levied on Insurance Premiums Paid by Respondent in New York to Unadmitted Insurers Is Unconstitutional and Void Under the Equal Protection Clause of the United States Constitution's Four-

teenth Amendment, Because (1) the Unadmitted Insurance [fol. 288] Tax Is an Arbitrary and Unreasonable Discrimination Against Unadmitted Insurers in Favor of Admitted Insurers, and (2) All Persons Paying Insurance Premiums on Policies Covering Texas Risks Are Not Taxed Equally, and Therefore, the Tax Denies Equal Protection of the Laws as Guaranteed by the United States Constitution's Fourteenth Amendment and Is Invalid and Void.

Argument Under Counterpoint No. 1

(1)

This Case Is Controlled by Binding and Indistinguishable United States Supreme Court Authority.

The Court of Civil Appeals (C.C.A. Opinion, p. ²⁷~~7~~) correctly declared that the unconstitutionality of the unadmitted insurance tax is well settled:

"We believe that invalidity and unconstitutionality of this statute is established by the opinion of the United States Supreme Court in *St. Louis Compress Company v. State of Arkansas*, 260 U.S. 346, 67 L. ed. 297. . . ."

St. Louis Compress is a square holding denouncing the unadmitted insurance tax on facts substantially identical to the case at bar. Petitioners do not attempt to distinguish *St. Louis Compress* but only suggest its authority may be stale.

Therefore, the constitutionality of the unadmitted insurance tax is not an open question, and Petitioners' bold suggestion that this Court should attempt to overrule *St. Louis Compress* is untenable.

Each of the pertinent facts set forth in the *St. Louis Compress* opinion is admitted in the factual stipulation [fol. 289] between Petitioners and Respondent.

Respondent's position and the Texas tax are identical to *St. Louis Cotton Compress Company's* position and the Arkansas tax, and the Texas tax is a clearly unconstitutional attempt to tax Respondent's activities in New York.

Certainly, strong and unequivocal Supreme Court holdings must prevail over Petitioners' prophecy that the *St. Louis Compress* line of authority may be overruled. As pointed out by the *Court of Civil Appeals* (Opinion, p. 9) in *Compania General De Tabacos De Filipinas v. C. I. R.*, 275 U.S. 87, *St. Louis Compress* was reaffirmed where the insurer *had no permit* to do business and was distinguished where the insurer *had a permit* to do business. This distinction is not applicable to Respondent, since neither of its insurers has a permit to do business in Texas.

Moreover, *Connecticut General Life Insurance Co. v. Johnson*, 303 U.S. 77 (1937), condemns as a due process violation, a California tax on reinsurance premiums paid to a Connecticut corporation admitted in California on contracts of reinsurance entered in Connecticut where the premiums were paid and the losses were payable. The court wrote:

"But the limits of the state's legislative jurisdiction to tax, prescribed by the Fourteenth Amendment, are to be ascertained by *reference to the incidence of the tax upon its objects rather than the ultimate thrust of the economic benefits and burdens of transactions within the state. As a matter of convenience and certainty, and to secure a practically just operation of the constitutional prohibition, we look to the state power to control the objects of the tax as marking the boundaries of the power to lay it.* Hence it is that a state which controls the property and activities within its boundaries of a foreign corporation admitted to do business there may tax them. *But the due process clause denies to the state power to tax or regulate the corporation's property and activities elsewhere.* . . .

"Appellant, by its reinsurance contracts, undertook only to indemnify the insured companies against loss upon their policies written in California. The reinsurance involved no transactions or relationship between appellant and those originally insured, and called for no act in California. . . . Apart from the facts that appellant was privileged to do business in California, and

that the risks reinsured were originally insured against in that state by companies also authorized to do business there, California had no relationship to appellant or to the reinsurance contracts. *No act in the course of their formation, performance or discharge, took place there. The performance of those acts was not dependent upon any privilege or authority granted by it, and California laws afforded to them no protection.*

"... All that appellant did in effecting the reinsurance was done without the state *and for its transaction no privilege or license by California was needed.* The tax cannot be sustained either as laid on property, business done, or transactions carried on within the state, or as a tax on a privilege granted by the state." §
(Emphasis added)

The *Johnson* case squarely condemns an extra-territorial tax similar to that attempted to be levied on Respondent, even though the insurer had a permit to do business in the taxing jurisdiction.

The same due process jurisdiction rule is enforced in *Allgeyer v. Louisiana*, 165 U.S. 578, condemning a fine imposed for insuring with unauthorized insurers in other states.

The United States Supreme Court in *St. Louis Compress and Compania General De Tabacos De Fil*, condemned [fol. 291] statutes substantially identical to Article 21.38 (2)(c). Substantially identical statutes were also condemned by the Supreme Court of Vermont in *State v. International Paper Co.*, 120 Atl. 900, and the Supreme Court of Idaho in *Hyatt v. Blackwell Lumber Co.*, 173 P. 1083.

In forty years at the bar, many courts have condemned the unadmitted insurance tax levied against Respondent. *Yet, Not One Single Case, Either State or Federal, Has Ever Upheld This Tax.*

(2)

Petitioner Makes No Effort to Distinguish *St. Louis Compress*, *Compania General Tabacos* or *Connecticut General Life Insurance Company*.

After virtually admitting the force of *St. Louis Compress*, Petitioner attacks *St. Louis Compress* with this statement:

"The *Allgeyer* and the *St. Louis Compress* cases were decided respectively in 1896 and 1922. Since then, the authority of those cases have been questioned in subsequent opinions by the United States Supreme Court." (Application, p. 15)

The authority of *St. Louis Compress*, as well as *Connecticut General Life Insurance Company*, was very recently recognized by the Supreme Court in *Federal Trade Commission v. Travelers Health Association*, 362 U.S. 301, decided March 28, 1960, citing the following 1945 congressional report on the McCarran-Ferguson Act:

"It is not the intention of Congress in the enactment of this legislation to clothe the States with any power to regulate or tax the business or insurance beyond that which they had been held to possess prior to the decision of the United States Supreme Court in the *Southeastern Underwriters Association* case. Briefly, your committee is of the opinion that we should pro-[fol. 292] vide for the continued regulation and taxation of insurance by the states, subject always, however, to the limitations set out in the controlling decisions of the United States Supreme Court, as, for instance, in *Allgeyer v. Louisiana* (165 U.S. 578), *St. Louis Cotton Compress Co. v. Arkansas* (260 U.S. 346) and *Connecticut General Life Insurance Co. v. Johnson* (303 U.S. 77), which hold, inter alia, that a State does not have power to tax contracts of insurance or reinsurance entered into outside its jurisdiction by individuals or corporations resident or domiciled therein covering risks within the State or to

regulate such transactions in any way." (H.R. Rep. No. 143, 79th Congress, 1st Sess. 3).

Petitioners' suggestion that the Supreme Court has "Questioned" and the Court of Civil Appeals' observation that the Court had "Criticized" *St. Louis Compress* are not clear nor explained, but it is clear that the Supreme Court has not "questioned" its authority in a tax case nor criticized the soundness of condemning a tax on premium payments in another state.

In the cases that have distinguished *St. Louis Compress*, such as the *Osborn* (310 U.S. 53) and *Hoopston* (318 U.S. 313) cases, *St. Louis Compress* has been distinguished on the ground that the regulated insurance company had a permit to do business in the state and the activities regulated were not extraterritorial. The valid distinction between regulation within the state and taxation without the state in no way lessens the force of *St. Louis Compress* when applied to Respondent's premium payments outside Texas. "Neither the *Cotton Compress* case nor the *Allamer* case has been overruled", (C.C.A. Opinion, P. 9) and, [fol. 293] consequently, the invalidity of Article 2138 (2) (c) is well settled.

(7)

The Unadmitted Insurance Tax Is an Occupation Tax and Not a Regulation.

Although the Court of Civil Appeals opinion properly ignores Petitioners' regulation argument, Petitioners tediously argue that the unadmitted insurance tax is a "Regulation" rather than a Tax. Yet, the constitutional effect of the "tax" cannot be changed by its name or characterization (tax or regulation). This is made crystal clear in *St. Louis Compress*, 260 U.S. 346, 348:

"The supreme court justified the imposition as an occupation tax,—that is, as we understand it, a tax upon the occupation of the defendant. But this court although bound by the construction that the supreme court may put upon the statute, is not bound by the

characterization of it, so far as that characterization may bear upon the question of its constitutional effect. *St. Louis Southwestern R. Co. v. Arkansas*, 235 U.S. 350, 362, 59 L. ed. 265, 271, 35 Sup. Ct. Rep. 99. The short question is whether this so-called tax is saved because of the name given to it by the statute, when it has been decided in *Allgeyer v. Louisiana*, 165 U.S. 578, 41 L. ed. 832, 17 Sup. Ct. Rep. 427, that the imposition of a round sum, called a fine, for doing the same thing, called an offense, is invalid under the 14th Amendment. It is argued that there is a distinction because the Louisiana statute prohibits (by implication) what this statute permits. But that distinction, apart from some relatively insignificant collateral consequences, is merely in the amount of the detriment imposed upon doing the act. The name given by the statute to the imposition is not conclusive. *Bailey v. Drexel Furniture Co.*, 259 U.S. 20, 66 L. ed. 817, 21 A.L.R. 1432, 42 Sup. Ct. Rep. 449; *Lipke v. Lederer*, 259 U.S. 557, 66 L. ed. 1061, 42 Sup. Ct. Rep. 549. In Louisiana the detriment was \$1,000. [fol. 294] Here it is 5 per cent upon the premiums,—which is 3 per cent more than is charged for insuring in authorized companies. Each is a prohibition to the extent of the payment required. The Arkansas tax manifests no less plainly than the Louisiana fine a purpose to discourage insuring in companies that do not pay tribute to the state. This case is stronger than that of *Allgeyer* in that here no act was done within the state, whereas there a letter constituting a step in the contract was posted within the jurisdiction. It is true that the state may regulate the activities of foreign corporations within the state, but it cannot regulate or interfere with what they do outside."

However, Petitioners' contention that the "tax" is a "regulation" is utterly devoid of merit.

Shortly after the enactment of the *unadmitted insurance* tax in 1957 the State Board of Insurance and the Comptroller of Public Accounts for the State of Texas administratively determined that the *unadmitted insurance* tax is an

"Occupation Tax" (See Court of Civil Appeals Opinion, p. 6, State Board of Insurance Annual Reports for 1957, 1958 and 1959, S.F. p. 8, Plaintiff's Exhibit 4, S.F. p. 10, Plaintiff's Exhibit 5, S.F. p. 11, Plaintiff's Exhibit 6, S.F. pp. 11 and 12; S.F. p. 19-24) (See also the Factual Stipulation, Plaintiff's Exhibit 1, S.F. p. 2)

The State Board of Insurance and the Comptroller of Public Accounts have set aside one fourth of the unadmitted insurance tax to the public free school fund as required of all occupation taxes by Article 7, Section 3, of the Constitution of the State of Texas. This was done because the State Board of Insurance and the Comptroller classified the unadmitted insurance tax as an occupation [fol. 295] tax (S.F. p. 26).

Although, at the time of the trial, Petitioners argued that the unadmitted insurance tax was a regulation and not an occupation tax, the State Board of Insurance and the Comptroller were continuing to construe and disburse such tax as an occupation tax in the same manner as they had done from the date of its enactment. In light of this long and consistent administrative interpretation, the Petitioners' current argument that the unadmitted insurance tax is not really an occupation tax cannot be taken seriously.

Moreover, at the time of the enactment of the tax in 1957, the Legislature expressly declared its purpose in Sec. 7 of Chapter 395 of the Laws of the 55th Regular Session of the 55th Legislature as follows:

"Sec. 7. The fact that the present laws relating to the placement of surplus lines of insurance do not provide adequately *for the conditions under which it shall be placed* with unauthorized insurers in a manner which *will insure the collection of the tax levied* upon the premiums charged or paid for such insurance creates an emergency and an imperative public necessity. . . ."

In light of this openly avowed declaration of intention to collect and insure collection of the tax on premiums paid to "unauthorized insurers", i.e., the collecting of the tax theretofore levied in Article 21.38(d) and thereupon levied in Article 21.38(e), Petitioners' argument of a different

intention is without force. In other words, the 1957 amendment simply eliminated the only possibility—paying premiums directly to “unauthorized insurers” for avoiding the discriminatory five per cent (5%) tax imposed by Article 21.38(d) in 1951.

The Legislative purpose—to tax and to collect the tax, as a revenue measure—was carried into effect by the departmental construction of the Comptroller and the State Board of Insurance. The Comptroller and the Board have construed the tax as an occupation tax and one-fourth of the tax, therefore, has been set aside for the benefit of the public free schools (available fund) in accordance with the Texas Constitution, Article 7, Section 3.

Any attempt by the State to renounce the Legislature’s avowed tax purpose is plainly without merit and an untimely afterthought induced by this case.

Petitioners’ pretension that the tax is designed to regulate insurance companies is refuted by Petitioners’ stipulation that neither of the London insurers was regulated or subject to regulation in Texas. (C.C.A. Opinion, p. 2)

Petitioners’ argument that the tax was designed to protect Respondent from its own credulity in buying from “unadmitted insurers” is thoroughly squelched by the testimony of the Texas Commissioner of Insurance (S.F. p. 19):

Q. “Do you do anything to try to regulate where or from whom Todd Shipyards buys its insurance?”

A. “No, sir.”

[fol. 297] The distinction between regulations and taxes was presented in the *Roue* case, 151 Tex. 182, 247 S.W. 2d 231, wherein the controlling principles, although carefully couched in generalities, are set forth:

“The leading case in Texas is *Texas Co. v. Stephens*, 1907, 100 Tex. 628, 103 S.W. 481 by Justice Williams. This court, in very clear and compelling language, laid down the rule for determining the distinction in the case of *Hurt v. Cooper*, 130 Tex. 433, 110 S.W. 2d 896,

899, (1) as follows: "It is sometimes difficult to determine whether a given statute should be classed as a regulatory measure. The principle of distinction generally recognized is that when, from a consideration of the statute as a whole, *the primary purpose of the fees provided therein is the raising of revenue, then such fees are in fact occupation taxes, and this regardless of the name by which they are designated.* On the other hand, if its primary purpose appears to be that of regulation, then the fees levied are license fees and not taxes." (Emphasis added)

Under these principles of the *Stephens, Cooper and Row* cases, the unadmitted insurance tax is clearly an occupation tax as originally announced by the Legislature and as originally construed by the State Comptroller and the State Board of Insurance.

(4)

Osborn v. Ozlin and Hoopston Canning Company Do Not Support Petitioners' Position.

Petitioners' reliance on *Osborn v. Ozlin*, 310 U.S. 53, and similar cases, is not justified. In *Osborn v. Ozlin*, the Virginia statute provided that no insurance on property within Virginia should be issued by a company *authorized to do business in Virginia* unless countersigned by a resident agent who was forbidden to share more than 50% of his [fol. 298] commission with non-resident brokers, and the Court held that since (1) the statute was applicable only to insurance companies authorized to do business in Virginia, and (2) the statute was not aimed at taxing or prohibiting contracts beyond Virginia's borders, the insurance company was not denied due process, because Virginia had jurisdiction to regulate the activities of a licensed insurer within the State. *Osborn v. Ozlin* specifically distinguishes *St. Louis Compress Co.*, the *Tabacos* and *Allgeyer* cases on the basis that the statutes in *Allgeyer*, *St. Louis Compress* and *Tabacos* (1) were not directed at the regulation of insurance within the state, but to the making of contracts

outside the state, and (2) *St. Louis Compress* did not tax nor regulate an insurer having a permit in the taxing jurisdiction.

Since (1) the unadmitted insurance tax is identical to the *Arkansas* tax condemned in *St. Louis Compress*, and (2) *Osborn v. Ozlin* expressly distinguishes *St. Louis Compress*, the *Osborn* case is no authority upholding the State's jurisdiction to tax Respondents' premium payments in New York.

Moreover, *Osborn v. Ozlin* does not uphold any tax and makes no comment on the State's power to tax premium payments in another state.

Another case relied on by the State is *Hoopeston Canning Co. v. Cullen*, 318 U.S. 313, that upheld New York's right to regulate an insurance company licensed and doing business in New York. The *Allgeyer* and *St. Louis Compress* [fol. 299] rule is distinguished in *Hoopeston Canning Co.*, and therefore, the *Hoopeston* case is no authority supporting the State's power to tax Respondent.

Again *Hoopeston* makes no holding nor comment on the State's power to tax premium payments in another state.

(5)

St. Louis Compress Co. Establishes a Sound Public Policy.

Although the policy of the United States is settled by *St. Louis Cotton Compress*, its policy of preventing a State from favoring its own and preventing the state from taxing transactions in another state is sound.

The Respondent's premium payments have been subjected to a three per cent (3%) tax levied by New York State, the situs of the premium payments. Article 6, Sec. 122, Subsection 9, Chapter 28, Insurance Laws, of the Consolidated Laws of the State of New York, levies a three per cent (3%) tax on these premiums.

If the states of New York and Texas are each permitted to tax the same premium payments, there will inevitably result, not only double, if not multiple, taxation among the states, but an unseemly race among the states to gain new tax sources by contriving to tax payments and other transactions clearly outside the constitutional border of the tax-

ing jurisdiction. The Due Process Clause of the Fourteenth Amendment was intended to confine the State's taxing [fol. 300] power to transactions within the State.

If Texas is allowed to tax New York premium payments, the State's taxing power will be released to roam unconfined and vagrant on property, transactions, occupations and business done in other states. This will not do, if "due process" and the Federal system are to survive. See Concurring Opinion of Justice Brennan in *Allied Stores v. Bowers*, 358 U.S. 522.

Appellants are not justified in relying on cases permitting the state to regulate the use of automobiles within the state, *Gillaspie v. Department of Public Safety*, 152 Tex. 459, 259 S.W. 2d 177, Cert. Den., 347 U.S. 433, to tax chain stores within the state, *Great Atlantic & Pacific Tea Co. v. Grosjean*, 301 U.S. 412, and to permit a direct action against an insurance company in the state courts, *Watson v. Employers' Liability Assurance Corp.*, 348 U.S. 66. In each of these cases the states regulated or taxed property, transactions or proceedings within the state, while Petitioners are attempting to tax Appellee's activities in New York—to wit, the New York payment of premiums.

Justice Holmes declared a wholesome public policy in *St. Louis Compress Co. v. State of Arkansas*, 260 U.S. 346, that denies Texas the power to tax Respondent's New York insurance premium payments:

"It is true that the state may regulate the activities of foreign corporations within the state, but it cannot regulate or interfere with what they do outside. . . ."

[fol. 301] The wisdom of Justice Holmes' policy determination is beyond question, and it may not be lightly cast aside.

Respondent agrees with Petitioners that the due process clauses of the Texas and United States Constitutions are coextensive in their limitation on the state's power to tax. (Application, p. 3)

Respondent respectfully submits that the lower Courts correctly held the unadmitted insurance tax unconstitutional and void under the due process clauses of the Texas and United States Constitutions, because:

- (1) The unconstitutionality of the unadmitted insurance tax under the due process clause is not an open question and is settled against Appellants' contention by *St. Louis Compress Company v. State of Arkansas*, 260 U.S. 346, and like cases.
- (2) Holmes' declaration that "the state may regulate the activities of foreign corporations within the state, but it cannot regulate or interfere with what they do outside" is sound policy.
- (3) The authorities relied on by Appellants, *Osborn v. Ozlin*, 310 U.S. 53, and *Hoopeson v. Cullen*, 318 U.S. 313, are not tax cases and are not even remotely in point.

Counterpoint No. 2

The Texas Unadmitted Insurance Tax Levied on Insurance Premiums Paid by Appellee in New York to Unadmitted Insurers Is Unconstitutional and Void Under the [fol. 302] Equality and Uniformity Clauses of the Texas Constitution. Because (1) the Unadmitted Insurance Tax Is an Arbitrary, Unreasonable and Invidious Discrimination Against Foreign Insurers and in Favor of Domestic Insurers, and (2) All Persons Paying Insurance Premiums on Policies Covering Texas Risks Are Not Taxed Equally and Uniformly, and Therefore, the Tax Denies Equality and Uniformity as Guaranteed by the Texas Constitution, Article 8, Sections 1 and 2.

Argument Under Counterpoint No. 2

The Court of Civil Appeals did not discuss nor decide the Texas "Equality" point, although it stated the point was presented for review.

(1)

"Constitutional Equality" Condemns the Attempt to Exempt Domestic Insurers From the Tax.

Article 8, Section 2 of the Texas Constitution specifically provides for "equality" in "occupation taxes":

"All occupation taxes shall be equal and uniform upon the same *class of subjects* within the limits of the authority levying the tax; . . ." (Emphasis added)

Article 8, Section 1 provides for "equality" in all taxation:

"Taxation shall be equal and uniform . . ."

As stipulated by the State, the 5% tax is levied *on the gross premiums paid on policies covering Texas risks* by an assured to an "unauthorized insurer", while premiums paid on identical policies to "authorized insurers" are taxed at a much smaller and discriminatory rate,—i.e., 1.1% to 3.85% (see Stipulation of Facts, Plaintiff's Exhibit No. 1, S.F. p. 2; C.C.A., opinion p. 6).

[fol. 303] The "*taxable incident*" is the premium payment, and the tax is measured by the amount of the payment.

The subject of the tax is "payment of premiums on insurance policies covering Texas risks".

Under the Equality and Uniformity Clause of the Texas Constitution the issues are simply:

- (1) Does the Levy of a Tax on Only a Carved Out Portion of the Premiums Paid on Texas Risks Violate the Texas "Equality" Requirement?
- (2) Does the Discrimination in Favor of Persons Paying Premiums to Texas or Admitted Insurers and Against Persons Paying Premiums to Foreign or Unadmitted Insurers Violate the Texas Constitution's Equality and Uniformity Provision?

As early as 1885, in *Pullman Palace Car Company v. The State of Texas*, 64 Tex. 274, the State attempted an occupation tax upon dining and pullman cars, but exempted cars owned and operated by a railroad on its own tracks. The Texas Supreme Court held that since the *subject of the tax was operating dining and pullman cars, all persons operating such cars must be equally and uniformly taxed*, and the exemption of railroad owned and operated cars rendered the tax unequal, unconstitutional and void under Article 8, Section 2.

The Court stated:

"The Legislature may classify subjects of taxation, and these classifications may be more or less arbitrary; but *when the classification is made all must be subjected to the payment of the tax imposed*, who, by the existence of the facts on which the classification is based, *fall within it*, unless exempted under some other constitutional provision."

[fol. 304] The *subject taxed* by the unadmitted insurance tax is *payment of premiums on policies covering Texas risks*, and the five per cent (5%) rate levied against Respondent by reason of such payments is not equal to a tax at rates between 1.1% and 3.85% on identical premium payments to Texas insurers. The Legislature may not lawfully impose discriminatory rates on the same tax subject—premiums paid on policies covering Texas risks—by exempting domestic insurers from the five per cent (5%) tax.

The lesson of the *Pullman* case is that the Legislature may select subjects of taxation, such as "*premiums paid on Texas risks*", but after selecting the subject of the tax,—i.e., gross premiums paid on Texas risks—the Legislature must tax all premiums equally without exemption and without discriminating against payments to foreign or unadmitted insurers and without favoring domestic or admitted insurers.

In other words, the payment of premiums on Texas risks may be selected as the "taxable event", but the Legislature may not then further select only certain persons performing the "taxable event".

Since premiums paid to Texas insurers are taxed at a much lower rate, 1.1% to 3.85% than premiums paid to foreign insurers, the tax is void and constitutionally unequal.

The principle was reaffirmed in *Hoeftling v. The City of San Antonio*, 85 Tex. 228, 20 S.W. 85, holding a city tax levied on butchers occupying private stalls could not exempt [fol. 305] butchers renting stalls from the City of San Antonio. In the *Hoeftling* case the *subject of taxation* was "butchers occupying stalls", and the court held no category of "butchers occupying stalls", including butchers renting

stalls from the City, could lawfully be exempted from the class. The *Hedding* classification is indistinguishable from the admitted-unadmitted insurer classification, since the subject of the tax is "*gross premiums paid on Texas risks*", and, therefore, the Legislature could not lawfully exempt admitted insurers from the taxable class, i.e., persons paying premiums on Texas risks.

(2)

Equality and Uniformity Condemn the Effort to Carve Out a Class of Taxpayers Paying Premiums on Texas Risks.

In *H. Roue Co. v. Texas Citrus Commission*, 151 Tex. 182, 247 S.W. 2d 231, a tax was levied on all persons packing, processing, placing, selling, etc. citrus fruit grown in Texas, but exempting all natural persons; held, the exemption of natural persons was an unconstitutional discrimination against corporations and was prohibited by the Texas "equality" requirement.

Roue illustrates an unconstitutional exemption of certain persons (natural persons) performing the "taxable event" (packing, etc. citrus fruit grown in Texas). This is the same type of unconstitutional discrimination incorporated in the unadmitted insurance tax—i.e., the exemption of certain persons (paying to admitted insurers) performing the taxable event (paying premiums on Texas risks). [fol. 306] Moreover, the *Roue* case condemns a classification in favor of natural persons and discriminating against corporations. The Article 21.38(2)(c) classification in favor of persons paying premiums to admitted insurers and against persons paying premiums to unadmitted insurers is an equally arbitrary and invidious violation of the equality and uniformity requirement of Article 8, Sections 1 and 2 of the Texas Constitution.

However, in the application of the *Roue* case to Article 21.38(2)(c), Respondent and Petitioners divide on the basic question:

"What Is the 'Subject of the Tax' or the 'Taxable Event'?"

Respondent submits that the "taxable event" and "subject of the tax" is the payment of premiums on Texas risks.

On the other hand, Petitioners argue that the taxable event is the "payment of premiums on Texas risks to *unadmitted insurers*". This is demonstrated by Petitioners' argument in the Court of Civil Appeals. (Appellants' Brief, p. 25):

"Appellee depended upon *Rouze v. Texas Citrus Commission*, 151 Tex. 182, 247 S.W. 2d 231, in the trial court. That case involved this second question: *within the class are all members taxed equally?* There the Legislature levied a tax upon persons, firms, associations, and corporations growing citrus fruit. The *exemption* to the tax was provided to 'natural persons growing citrus fruit'. Clearly, then, all members of the class were not taxed equally. The case before this Court is clearly distinguishable from the *Rouze* case since Subsection (e) of Section 2 of Article 21.38 is [fol. 307] applicable to *all* persons who purchase from authorized insurers.'" (Emphasis added)

Petitioners suggest that the *Rouze* tax is condemned because of the express exemption of "natural persons" from the tax on "all persons" growing fruit. This is true!

Yet, if the *Rouze* tax had been levied only against corporations without exempting natural persons, the constitutional effect, i.e., the discrimination against corporations is the same. The objectionable classification is the same whether the exemption is made expressly or is accomplished in defining the persons against whom the tax is levied.

The constitutional vice is in exempting persons after selecting the "subject of the tax"—i.e., persons growing . . . citrus fruit". If the tax is levied on all persons growing citrus fruit, no class of persons growing the taxed fruit may be lawfully exempted or carved from the statute imposing the tax. Likewise, if the tax is levied on premium payments on policies covering Texas risks, no class of persons may be exempted or carved from the statute imposing the tax. Respondent's payments to unadmitted insurers are entitled to equal treatment and may not be lawfully carved from the larger class paying premiums on Texas risks.

While the exemption of admitted insurers in Article 21.38(2)(c) is more subtle than the express exemption in the *Rouss* case, because the exemption is accomplished in [fol. 308] defining the persons subject to the tax, the deliberate discrimination against unadmitted insurers is nonetheless real and unconstitutional.

The unadmitted insurance tax might have been drafted so as to place the tax on all persons "paying premiums on Texas risks" with an exemption for those paying to admitted insurers. Appellants apparently concede this is an unconstitutional exemption, even though the unadmitted insurance tax accomplishes this precise exemption in defining the persons subject to the tax.

For example, the unadmitted insurance tax effectively exempts from the tax persons paying to admitted insurers. The vice is the same as in the *Rouss* case,—certain persons performing the taxable event (paying premiums on Texas risks) are exempt. The vice cannot be eliminated by the method employed to accomplish this exemption. The constitutional effect is the same, and whether the exemption is stated to be an exemption as in the *Rouss* case or the exemption is accomplished by defining the "taxable event" as in the unadmitted insurance tax is immaterial. In other words, whenever the unlawful exemption is accomplished the tax is not equal.

Petitioners' presentation of "Equality and Uniformity" never meets two vital issues, to-wit:

- (1) May the Legislature lawfully exempt certain persons (those paying to admitted insurers) performing the taxable event (paying premiums on Texas risks)?
- (2) In any event, may the State lawfully discriminate against unadmitted or foreign insurers in favor of domestic or admitted insurers, i.e.,—is a classification based on "admission to do business in the state" [fol. 309] unconstitutionally arbitrary and unreasonable?

Respondent submits that the unadmitted insurance tax is an unconstitutional violation of the "Equality and Uniformity" clauses of the Texas Constitution, because

- (1) Upon proper analysis, the "subject of the tax" or "taxable event" is payment of insurance premiums on Texas risks.
- (2) This attempt to favor admitted insurers and to discriminate against unadmitted insurers creates an arbitrary and unreasonable classification destroying the equality and uniformity required by the Texas Constitution.
- (3) Although the Legislature may establish classifications for taxes such as premium payments on Texas risks, pullman cars, butcher's stalls or packing citrus fruit, when the Legislature decided to tax premium payments on Texas risks, it could not lawfully exempt payments to admitted insurers.

Counterpoint No. 3

The Texas Unadmitted Insurance Tax Levied on Insurance Premiums Paid by Respondent in New York to Unadmitted Insurers Is Unconstitutional and Void Under the Equal Protection Clause of the United States Constitution's Fourteenth Amendment, Because (1) the Unadmitted Insurance Tax Is an Arbitrary and Unreasonable Discrimination Against Unadmitted Insurers in Favor of Admitted Insurers, and (2) All Persons Paying Insurance Premiums on Policies Covering Texas Risks Are Not Taxed Equally, and Therefore, the Tax Denies Equal Protection of the Laws as Guaranteed by the United States Constitution's Fourteenth Amendment and Is Invalid and Void.

Argument Under Counterpoint No. 3

[fol. 310] The Court of Civil Appeals did not reach nor decide whether equal protection condemned Article 21.38 (2)(e).

(1)

"Equal Protection" Condemns the State's Attempt to Favor Domestic Insurers and Discriminate Against Foreign Insurers.

The deliberate discrimination embodied in the unadmitted insurance tax is a discrimination in favor of premiums paid to admitted insurers (1.1% to 3.85% rate) and against premiums paid to unadmitted insurers (5% rate). (See Stipulation, Plaintiff's Exhibit No. 1, S.F., p. 2; C.C.A. Opinion, p. 6). The Legislature openly seeks to favor admitted insurers by this discriminatory tax on premium payments to unadmitted insurers.

The Equal Protection Clause of the Fourteenth Amendment imposes restrictions substantially similar to the Equality and Uniformity Clauses of Article 8, Sections 1 and 2 of the Texas Constitution. (See 51 Am. Jur. 222)

The unconstitutionality of a discrimination favoring domestic over foreign insurers has been well established since *Hanover Fire Insurance Company v. Carr*, 272 U.S. 494, invalidating under the equal protection clause, an Illinois net receipts tax levied on foreign corporations but exempting domestic corporations. The Court wrote at page 516:

"But an occupation tax imposed upon 100 per cent of the net receipts of foreign insurance companies admitted to do business in Illinois is a *heavy discrimination in favor of domestic insurance companies of [fol. 311] the same class and in the same business* which pay only a tax on the assessment of personal property at a valuation reduced to one-half of 60 per cent of the full value of the property. It is a denial of the equal protection of the laws." (Emphasis added)

Hanover Fire Insurance Company teaches that "Equal Protection" prevents the state from imposing taxes that favor domestic insurers and discriminates against foreign insurers.

Recently, *Fireman's Fund Insurance Company v. McDaniel*, 327 S.W. 2d 358 (No Writ) squarely condemned a discrimination in the Texas venue statute against foreign corporations and in favor of domestic corporations, because a domestic-foreign corporation classification is arbitrary and unreasonable resulting in constitutionally unequal treatment. This domestic-foreign corporation classification is the same discriminatory classification presented in the case at bar.

The United States Supreme Court has uniformly condemned as constitutionally "unequal" all attempts by the States to favor transactions with *residents* and to discriminate against transactions with *non residents*. The leading case is *Wheeling Steel Corporation v. Glander*, 337 U.S. 562, cited and followed in *Roux*, 151 Tex. 182, 247 S.W. 2d 231, holding a tax on intangibles of a foreign corporation, although exempting identical intangibles of residents, is an unconstitutional classification. *Glander* plainly declares that state taxation may not establish classifications to *favor residents* and to *discriminate against non-residents*. The Court said:

[fol.312] "It seems obvious that appellants are not accorded equal treatment, and the inequality is not because of the slightest difference in Ohio's relation to the decisive transaction, but *solely because of the different residence of the owner.*"

Respondent is not accorded equal treatment and the inequality is not because of the slightest different (sic) in Texas' relation to the premium payment, but the inequality is solely because of paying premiums to unadmitted insurers. The inequality deliberately favors Texas insurers and deliberately discriminates against New York and London insurers.

Glander teaches that (1) a state tax must equally apply to its residents and a foreign corporation, and (2) "Equal Protection" denies the states the right to favor their residents over non-residents. The Texas unadmitted insurance tax does not apply equally to admitted (residents) and unadmitted insurers (non-residents) and falls within the specific condemnation of *Glander*.

A recent case, *Allied Stores of Ohio v. Bowers*, 358 U.S. 522, upheld an Ohio tax favoring property of non-residents and discriminating against property of residents. Yet, the concurring opinion of Justice Brennan carefully preserves *Glander's* authority and Justice Brennan declared that any State attempt to favor residents is condemned by the Fourteenth Amendment and is judged mechanically, i.e., discrimination in favor of residents is unlawful per se, because of the nature of our Federal system. Justice Brennan wrote:

[fol.313] "... There is, therefore, no reason to judge the state action mechanically by the same principles as state efforts to favor resident. . . ."

The Texas unadmitted insurance tax may be condemned "mechanically" because it is a clear effort to favor residents and "those paying tribute to the state".

Although the United States Supreme Court has approved many different schemes of classification and has approved a classification favoring non-residents over residents, *Allied Store of Ohio v. Bowers*, 358 U.S. 522, the United States Supreme Court has uniformly condemned all attempts by states to levy taxes discriminating in favor of domestic corporations and discriminating against foreign corporations.

The point Respondent makes is that equal protection prevents Texas from selecting a class for taxation so as to favor domestic insurers and to discriminate against foreign insurers. To state the point in yet another way, a classification of admitted and unadmitted insurers so as to favor the admitted insurers is an arbitrary and unconstitutionally unequal classification.

Petitioners' brief does not cite any United States Supreme Court authority on "Equal Protection" approving or disapproving of a state's attempt to favor its own residents or domestic insurers. Moreover, Petitioners erroneously assume any classification satisfies equal protection, and, therefore, Petitioners do not attempt to distinguish between valid and invalid classifications.

[fol.314] It is true that the unadmitted insurance tax accomplishes its intended discrimination by distinguish-

ing between admitted and unadmitted insurers and does not expressly base the discrimination on residence and non-residence or on domestic and foreign insurers. However, Respondent submits that there is no distinction between the unadmitted insurance tax's classification of "admitted and unadmitted insurers" and the classification of domestic and foreign insurers in *Hanover Fire Insurance Co.* The State's effort to favor admitted insurers and discriminate against unadmitted insurers is identical to and has the same vices as the State's efforts to favor domestic over foreign insurers. Each of these discriminations permits the State to favor its own, flies in the face of our Federal system and defies the limitations of "Equal Protection".

Petitioners do not distinguish but simply ignore *Hanover Fire Insurance Co.*, condemning a classification favoring domestic insurers and discriminating against foreign insurers. Respondent's attack is leveled at a classification adopted in the unadmitted insurance tax so as to favor domestic or admitted insurers and to discriminate against foreign or unadmitted insurers. Substantially similar attacks were sustained in the *Hanover Fire*, *Fireman's Fund* and *Glander* cases.

Respondent submits that the following classifications are unequal:

[fol. 315] (1) Domestic-Foreign Corporation classification favoring domestic corporation (*Hanover Fire*, *Glander*, *Fireman's Fund Insurance Company*—case at bar)

(2) Admitted-Unadmitted Insurance Company classification favoring admitted insurers, which is merely another way of saying domestic insurers-foreign insurers favoring domestic insurers.

(2)

The Exemption of Domestic Insurers From
the Tax Denies Equal Protection.

Respondent's equality and uniformity argument under Counterpoint No. 2 pointing out that no class of persons

performing the "taxable event"—paying premiums on Texas risks—may be exempted from the tax is equally valid under the "Equal Protection" point. This "no-exemption" principle was followed in *Morey v. Doud*, 354 U.S. 457, when an Illinois license and regulatory statute applying to firms "selling or issuing money orders"—but exempting the American Express Company—was condemned as a denial of "Equal Protection".

In other words, after Illinois decided to regulate the "selling and issuing of money orders" all people so selling and issuing are required by "Equal Protection" to be treated equally.

The *Morey* principle requires that all persons "paying premiums on Texas risks" be taxed equally and condemns the attempted Texas exemption in favor of domestic insurers.

[fol. 316]

Summary of Argument

In a nutshell, Petitioners' equality arguments under Counterpoints Nos. 2 and 3 are two-pronged:

- (a) First:—Although the State may classify taxable events (premium payments on Texas risks), the State may not classify the persons performing the taxable event ("persons paying to admitted or unadmitted insurers"). The attempted classification of persons renders the tax constitutionally unequal and void.
- (b) Second:—Even though the State has the right to classify persons paying the taxed premiums, nevertheless, the attempted discriminatory classification in favor of payments to domestic (admitted insurers) and against foreign insurers (unadmitted insurers) is arbitrary and unreasonable so as to render the tax constitutionally unequal and void.

The distinction between the First and Second analysis is not always clearly drawn in the cases, yet Respondent submits that two "equality" questions are presented:

- (1) The power to classify persons paying premiums on Texas risks, vel non, and
- (2) The reasonableness of the classification—admitted and unadmitted insurers.

Respondent strongly urges that the unadmitted insurance tax is unconstitutional and void, because:

- (1) When applied to Appellee's premium payments in New York, the unadmitted insurance tax is condemned by the due process clauses of the Texas and United States Constitutions by the authority of *St. Louis Compress Company v. Arkansas*, 260 U.S. 346.
- [fol. 317] (2) The subject of the unadmitted insurance tax is premiums paid on Texas risks, but exempting admitted insurers who are taxed at a favored rate. The exemption of "admitted insurers" is unreasonable and is condemned by the equality requirements of the Texas and United States Constitutions.
- (3) The discrimination in favor of premiums paid to "resident or admitted insurers" (1.1% to 3.85%) and the discrimination against "unadmitted or foreign insurers" (5% tax rate) is an arbitrary and unreasonable classification condemned by the Equality requirements of the Texas and United States Constitutions.

Wherefore, Premises Considered, Respondent prays that (1) the Application for Writ of Error be refused or alternatively, refused N.R.E., (2) the unadmitted insurance tax be held unconstitutional and void when applied to Respondent's New York premium payments, and (3) for such other and further relief and orders as may be appropriate in the premises.

Liddell, Austin, Dawson & Huggins, By Charles R. Vickery, Jr., Attorneys for Appellee, Todd Shipyards Corporation, 519 Gulf Building, Houston 2, Texas.

[fol. 318] Certificate of service (omitted in printing).

[fol. 319] Clerk's Certificate to foregoing paper (omitted in printing).

[fol. 320]

IN THE SUPREME COURT OF TEXAS

AUSTIN

No. A-8150

From Travis County, Third District

STATE BOARD OF INSURANCE ET AL.

vs.

TODD SHIPYARDS CORPORATION

JUDGMENT—February 8, 1961

Application of petitioners for writ of error to the Court of Civil Appeals for the Third Supreme Judicial District having been duly considered by the Court, and the Court having determined that same presents no error requiring reversal of the judgment of the Court of Civil Appeals, it is ordered that the application be, and hereby is, refused in accordance with the per curiam opinion herein this day delivered.

It is further ordered that petitioners, the State Board of Insurance of Texas and its individual members, William A. Harrison, Commissioner of Insurance, Will Wilson, Attorney General of Texas, Robert S. Calvert, Comptroller of Public Accounts of the State of Texas and Jesse James, Treasurer of the State of Texas, in their official capacities, pay all costs incurred on this application.

[fol. 321]

IN THE SUPREME COURT OF TEXAS

No. A-8150

From Travis County, Third District

STATE BOARD OF INSURANCE, ET AL., Petitioner

v.

TODD SHIPYARDS CORPORATION, Respondent.

PER CURIAM OPINION—February 8, 1961

We are of the opinion that the decision in this case is controlled by *Allgeyer v. Louisiana*, 165 U.S. 578, 17 S. Ct. 427, 41 L. ed. 832 and *St. Louis Cotton Compress Company v. State of Arkansas*, 260 U.S. 346, 43 S. Ct. 125, 67 L. ed. 297. We are unwilling to take the position that in view of *Osborn v. Ozlin*, 310 U.S. 53, 60 S. Ct. 758, 84 L. ed. 1074 and *Hoopston Canning Co. v. Cullen*, 318 U.S. 313, 63 S. Ct. 602, 87 L. ed. 777, the Supreme Court of the United States will probably overrule the *Allgeyer* and *Cotton Compress* cases. We abide by what the Supreme Court has held and refuse to speculate upon what said Court may hold.

The application for writ of error to the Court of Civil Appeals (opinion reported in 340 S.W.2d 339) is refused, no reversible error.

[fol. 322] Clerk's Certificate to foregoing paper (omitted in printing).

[fol. 323]

[File endorsement omitted]

[fol. 324]

IN THE SUPREME COURT OF TEXAS

No. A-8150

STATE OF TEXAS, ET AL., Petitioners

v.

TODD SHIPYARDS CORPORATION, Respondent

PETITIONERS' MOTION FOR REHEARING—

Filed February 20, 1961

To the Honorable Supreme Court of Texas:

Now Comes the State of Texas and the other petitioners in the above numbered and entitled cause, and respectfully move the Court to set aside the judgment of this Court, rendered on the 8th day of February, 1961, refusing the petitioners' application for writ of error, and to grant them a rehearing, and to grant petitioners' application for writ of error, and would respectfully say therefor:

The Supreme Court erred in refusing petitioners' application for writ of error on the first point which reads: The Court of Civil Appeals erred in holding that Article 21.38, Sec. 2, subsection (e), of the Texas Insurance Code is unconstitutional as a violation of due process, Section 1 of the 14th Amendment of the United States Constitution.

The Supreme Court erred in refusing petitioners' application for writ of error on the second point which reads: The Court of Civil Appeals erred in holding that Article 21.38, Sec. 2, subsection (e), of the Texas Insurance Code is unconstitutional as a violation of due process, Section [fol. 325] 19, Article I of the Texas Constitution.

The Supreme Court erred in refusing petitioners' application for writ of error on the third point which reads: The Court of Civil Appeals erred in failing to pass on

and in failing to hold that Article 21.38, Sec. 2, subsection (c) of the Texas Insurance Code is constitutional and not a violation of the equal protection clause of the United States Constitution, Section 1, 14th Amendment.

The Supreme Court erred in refusing petitioners' application for writ of error on the fourth point which reads: The Court of Civil Appeals erred in failing to pass on and in failing to hold that Article 21.38, Sec. 2, subsection (c) of the Texas Insurance Code is constitutional and not a violation of the equality and uniformity clauses of the Texas Constitution, Sections 1 and 2, Article VIII.

The Supreme Court erred in refusing petitioners' application for writ of error on the fifth point which reads: The Court of Civil Appeals erred in affirming the judgment of the trial court, and in not reversing and rendering the judgment of the trial court.

Wherefore, Premises Considered, the petitioners respectfully pray that this motion be granted and that petitioners' application for writ of error be granted.

Respectfully submitted,

Will Wilson, Attorney General of Texas; Fred B. Werkenthin, Assistant Attorney General; Bob E. Shannon, Assistant Attorney General, Attorneys for Petitioners, State of Texas, et al., Capitol Station, Austin 11, Texas.

[fol. 326] Certificate of Service (omitted in printing).

Clerk's Certificate to foregoing paper (omitted in printing).

[fol. 327]

IN THE SUPREME COURT OF TEXAS

No. A-8150

From Travis County, Third District

STATE BOARD OF INSURANCE ET AL.

VS.

TODD SHIPYARDS CORPORATION

ORDER OVERRULING MOTION FOR REHEARING—March 15, 1961

Petitioners' motion for rehearing of application for writ of error having been duly considered by the Court, it is ordered that said motion be, and hereby is, overruled.

[fol. 328]

SUPREME COURT OF THE UNITED STATES

No. 144—October Term, 1961

[Title omitted]

ORDER ALLOWING CERTIORARI—October 9, 1961

The petition herein for a writ of certiorari to the Court of Civil Appeals of the State of Texas, Third Supreme Judicial District, is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.